

Subpart 570.7—Forms**570.701 Standard forms.**

Use Standard Form 2, U.S. Government Lease for Real Property, to award leases unless you use GSA Form 3626 (see 570.702). Delete the reference to the Standard Form 2-A in paragraph 7.

570.702 GSA forms.

(a) You may use GSA Form 3626, U.S. Government Lease for Real Property (Short Form), to award leases if you

use the simplified leasing procedures in 570.2 or if you determine it advantageous to use.

(b) You may use GSA Form 276, Supplemental Lease Agreement, for actions requiring the agreement of both parties. This includes actions such as amending an existing lease to acquire additional space, obtaining partial release of space, revising the terms of a lease, settling restoration claims, and acquiring alterations.

(c) You may use GSA Form 1364, Proposal To Lease Space, to obtain offers from prospective offerors.

CHAPTER 6—DEPARTMENT OF STATE

(Parts 600 to 699)

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26159, July 11, 1988, unless
otherwise noted.

601.000 Scope of part.

This part describes the Department
of State Acquisition Regulation
(DOSAR) in terms of establishment, re-
lationship to the Federal Acquisition

Regulation (FAR), arrangement, appli-
cability, and deviation procedures.

[53 FR 26159, July 11, 1988, as amended at 59
FR 66750, Dec. 28, 1994]

Subpart 601.1—Purpose, Authority, Issuance

601.101 Purpose.

The DOSAR is issued to provide De-
partment guidance in accordance with
the policy cited in FAR 1.301(a)(2). The
portions of this regulation that affects
the relationship between a Department
of State organization and a contractor
or potential contractor are published
in this chapter 6 of title 48 of the Code
of Federal Regulations, in accordance
with FAR 1.301(b).

[59 FR 66750, Dec. 28, 1994]

601.105 Issuance.

601.105-3 Copies.

The DOSAR is available on CD-ROM
disks through the Department's
INFOEXPRESS program, or through
the Internet from A/OPE's Acquisition
Website. The Internet address is: [http://
www.statebuy.gov/home.htm](http://www.statebuy.gov/home.htm)

[64 FR 43620, Aug. 11, 1999]

601.106 OMB approval under the Pa- perwork Reduction Act.

The Paperwork Reduction Act of 1980
(44 U.S.C. 3501-3520) requires that Fed-
eral agencies obtain approval from the
Office of Management and Budget be-
fore collecting information from ten
(10) or more members of the public. In-
dividuals are not required to respond to
information collection unless the OMB
number and burden estimate informa-
tion is provided. Accordingly, the in-
formation and recordkeeping require-
ments contained in this regulation
have been approved by OMB under
OMB Control Number 1405-0050. The
burden estimate is 225,302 hours.

[64 FR 43620, Aug. 11, 1999]

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201-1 The two councils.

The Office of the Procurement Executive (A/OPE) represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint a representative for this purpose. A/OPE is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66750, Dec. 28, 1994]

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.

(a) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 1.301 (see Delegation of Authority No. 120 (34 FR 18095, October 30, 1969), as amended by Delegation of Authority No. 120-4 (59 FR 38022, July 26, 1994)). Under Delegation of Authority No. 120-5 (59 FR 62771, December 6, 1994), the Assistant Secretary of State for Administration re-delegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c).

(c) The DOSAR implements and supplements the FAR.

[59 FR 66751, Dec. 28, 1994, as amended at 64 FR 43620, Aug. 11, 1999]

601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to section 208 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308), or the For-

eign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*).

(b) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in those areas which have been exempted by the cognizant administrative office.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994; 64 FR 43620, Aug. 11, 1999]

601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, sections, subsections, and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101-70.

(b) The DOSAR and its revisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c) The DOSAR shall be referenced in the same manner as described at FAR 1.105-2(c).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994; 64 FR 43620, Aug. 11, 1999]

Department of State

601.603-3

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

Subpart 601.5—Agency and Public Participation

601.570 Rulemaking.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with FAR part 1.

(b) The Procurement Executive shall issue all DOS acquisition regulations.

[59 FR 66751, Dec. 28, 1994]

Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.602 Contracting officers.

601.602-1 Authority.

(a) DOS contracts are awarded pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including FAR-covered interagency acquisition agreements, for the expenditure of funds involved in the acquisition of real and personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603-70.

(c) The contracting officer shall not award, modify, or terminate a contract unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have been obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

[53 FR 26159, July 11, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66751, Dec. 28, 1994]

601.603 Selection, appointment, and termination of appointment.

601.603-3 Appointment.

(a) *General.* There is no contracting officer authority conferred upon any DOS employee by virtue of position. The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603-3, with the one exception as noted in paragraph (b) of this section. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive. Only qualified employees shall be appointed as contracting officers. A/OPE is responsible for providing guidance and oversight in managing such appointments.

(b) *Temporary warrants.* The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than \$100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

(c) *Non-Federal employees.* Only United States Government direct-hire employees who are U.S. citizens shall be appointed as contracting officers. Personal services contractors, Foreign Service Nationals, and Third Country Nationals are not eligible for appointment as DOS contracting officers.

(d) *Personal services agreements.* Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) An individual, or class of individuals, granted authority by the Director, PER/OE; or

(2) Individuals with contracting officer certificates of appointment.

[59 FR 66752, Dec. 28, 1994, as amended at 64 FR 43620, Aug. 11, 1999]

601.603-70 Delegations of authority.

(a) *Delegations.* As stated in 601.603-3(a), there is no contracting officer authority conferred by virtue of position. Pursuant to 601.602-1(b), the Procurement Executive has designated the following as contracting activities as defined in FAR 2.101. These authorities are not redelegable. In addition, specific individuals are designated as heads of contracting activities (HCAs) (see FAR 2.101):

(1) *Overseas posts.* Each overseas post shall be regarded as a contracting activity to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services. The Principal Officer, the Administrative Officer, or the Supervisory General Services Officer are designated as HCAs; provided, that he/she has a contracting officer's warrant issued by the

Procurement Executive. The Procurement Executive (or authorized A/OPE staff) may delegate to a contracting officer, on a case-by-case basis, the authority to award a contract or modification which exceeds the contracting officer's warrant level.

(i) No authority is delegated to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts.

(ii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named in paragraph (a)(1) introductory text of this section may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is required to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*), is delegated to the Deputy Assistant Secretary of State for Foreign Buildings.

(3) *Office of Logistics Management; Office of Acquisition Management (A/LM/AQM).* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies and nonpersonal services is delegated to the Director or designee as the HCA.

(4) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 *et seq.*), is delegated to the Director of the Foreign

Service Institute, the Executive Director, the Deputy Executive Director, and the Supervisory Contracting Officer as the HCA.

(5) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 *et seq.*), is delegated to the Director, Office of Foreign Missions, and the Administrative Officer as the HCA.

(6) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), is delegated to the Counselor for Administration as the HCA.

(7) *Moscow Embassy Building Control Office.* The authority to enter into and administer contracts for the planning, design, construction and supplies for the embassy office building in Moscow is delegated to the Director, Moscow Embassy Building Control Office as the HCA.

(8) *Diplomatic Telecommunication Service—Program Office.* The authority to enter into and administer contracts for the leasing or purchase of telecommunications services, circuits, subsystems, supplies and associated professional services is delegated to the Chief, Acquisition Branch as the HCA.

(9) *Regional Procurement Support Offices.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(i) RPSO Germany in conjunction with Embassy Bonn and Consulate General Frankfurt;

(ii) RPSO Tokyo in conjunction with Embassy Tokyo;

(iii) RPSO Singapore in conjunction with Embassy Singapore; and,

(iv) RPSO Florida in conjunction with the Florida Regional Center.

(b) *Other delegations.* Several DOS offices have been delegated limited procurement authority, although they have not been designated as HCAs. Matters requiring HCA resolution are

referred to the A/LM/AQM. These delegations are provided only to warranted contracting officers in the respective offices. They are as follows:

(1) *Office of Language Services.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation for interpreting, translating, conference reporting, and related language support and escort services.

(2) *Office of Overseas Schools.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended.

(3) *Library.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended, and for the acquisition of newspapers, books, maps, and periodicals.

(4) *Office of International Conferences.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended.

(5) *Bureau of Population, Refugees, and Migration.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to the Migration and Refugee Assistance Act of 1962, as amended, and Executive Order 11077, dated January 22, 1963.

(6) *Bureau of International Narcotics and Law Enforcement Affairs.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13, orders against existing contracts up to the maximum ordering threshold or limitation and personal services contracts pursuant to

the Foreign Assistance Act of 1961, as amended; and, 48 CFR Chapter 7, Agency for International Development Acquisition Regulation, including any amendments thereto.

(7) *Office of Small and Disadvantaged Business Utilization*. The authority to enter into and administer 8(a) purchase orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

[59 FR 66752, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43620, Aug. 11, 1999]

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

Sec.

602.101 Definitions.

602.101-70 DOSAR definitions.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26162, July 11, 1988, unless otherwise noted.

Subpart 602.1—Definitions

602.101 Definitions.

602.101-70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

Consolidated Receiving Point or *CRP*; means the contractor under contract to a Despatch Agency to receive and prepare items for shipment to a post. The CRP receives, records, consolidates, and packs items for shipment overseas under the direction of the Despatch Agency.

Department or *DOS* means the Department of State, including all of its activities wherever located.

Despatch Agency means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply and Transportation. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and, Seattle, Washington.

Government means the Government of the United States of America unless specifically stated otherwise.

Major system has the same definition as described in FAR 2.101; however, the Department of State's dollar threshold as defined in paragraph (b) is \$30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (c).

Overseas post means a "post" located outside the United States of America.

Post means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66753, Dec. 28, 1994; 60 FR 39662, Aug. 3, 1995; 64 FR 43620, Aug. 11, 1999]

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.1—Safeguards

Sec.

603.104 Procurement integrity.

603.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

603.104-10 Violations or possible violations.

Subpart 603.2—Contractor Gratuities to Government Personnel

603.204 Treatment of violations.

Subpart 603.4—Contingent Fees

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.601 Policy.

603.602 Exceptions.

Subpart 603.7—Voiding and Rescinding Contracts

603.704 Policy.

603.705 Procedures.

Subpart 603.9—Whistleblower Protections for Contractor Employees

603.905 Procedures for investigating complaints.

603.906 Remedies.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Department of State

603.204

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 603.1—Safeguards

SOURCE: 64 FR 43620, Aug. 11, 1999, unless otherwise noted.

603.104 Procurement integrity.

603.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized to receive contractor bid or proposal information or source selection information by the contracting officer or head of the contracting activity, who is the agency head's designee, when such access is necessary to the conduct of an acquisition:

(1) Individuals involved in the selection process, such as the Contracting Officer's Representative, technical evaluators, advisors, consultants, and the Source Selection Official;

(2) Clerical personnel directly involved in the acquisition;

(3) Supervisors in the contracting officer's chain of command;

(4) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification;

(5) Individuals from offices who may be required to perform pre-award audits, such as DCAA; and,

(6) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of the Legal Adviser, Office of Legislative Affairs, Office of the Inspector General, Office of the Procurement Executive, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

(c) All information which is considered proprietary or source selection information shall be marked to prevent its unauthorized disclosure before award. This may be performed by marking each page of proprietary or source selection material with the statement "Source Selection Information—See FAR 3.104" or "Proprietary Information—See FAR 3.104", as applicable. Alternatively, this requirement

may be met by attaching Forms DS-1926, Proprietary Information (Cover Page), and DS-1927, Source Selection Information (Cover Page), to any proprietary and source selection information. Individuals responsible for preparing derivative documents which reference, cite, or paraphrase proprietary or source selection information, are responsible for marking such documents as indicated in this paragraph. The required marking or cover page shall be included when technical proposals are submitted for evaluation and when an audit is requested. After award, the procedures governing the Freedom of Information Act and related laws/regulations shall be followed regarding release of proprietary or source selection information.

603.104-10 Violations or possible violations.

(a)(1) The contracting officer shall report any violation or possible violation to the head of the contracting activity after he or she has reviewed the documentation and has concluded that there is no impact on the acquisition.

(d)(2)(ii)(B) The Procurement Executive is the agency head's designee for the purposes of FAR 3.104-10(d)(2)(ii)(B).

Subpart 603.2—Contractor Gratuities to Government Personnel

603.204 Treatment of violations.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 3.204.

(b) *Procedures.* Upon a decision to proceed with an investigation of an alleged violation of the Gratuities clause, the Assistant Inspector General for Investigations shall provide to the contractor a written notice by certified mail, return receipt requested. The notice shall present the findings of the decision and shall establish a schedule, including location, for an investigative hearing for the purposes prescribed in FAR 3.204(b). As determined necessary by the Assistant Inspector General for Investigations, follow-up hearings may be scheduled. Upon completion of the investigation, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a

603.405

report and recommendation, together with all pertinent documentation.

(c) In addition to the requirements of FAR 3.204(c), when the Procurement Executive determines that a violation has occurred, the Procurement Executive shall so notify the Assistant Inspector General for Investigations. The Assistant Inspector General for Investigations shall then notify the individual who made the report, the Office of the Legal Adviser, and, if appropriate, the Department of Justice.

Subpart 603.4—Contingent Fees

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient to determine whether an actual violation has occurred. The contracting officer may also obtain the advice of the Office of the Legal Adviser as to the legality and general propriety of any information disclosed.

[64 FR 43621, Aug. 11, 1999]

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.601 Policy.

(a) It is Department policy not to award contracts to Federal employees, or businesses substantially owned or controlled by Federal employees.

[59 FR 66754, Dec. 28, 1994]

603.602 Exceptions.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.602.

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Subpart 603.7—Voiding and Rescinding Contracts

603.704 Policy.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.704.

[59 FR 66754, Dec. 28, 1994]

603.705 Procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.705.

[59 FR 66754, Dec. 28, 1994]

Subpart 603.9—Whistleblower Protections for Contractor Employees

SOURCE: 64 FR 43621, Aug. 11, 1999, unless otherwise noted.

603.905 Procedures for investigating complaints.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.905.

603.906 Remedies.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.906.

PART 604—ADMINISTRATIVE MATTERS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 4.502.

[64 FR 43621, Aug. 11, 1999]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

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605.202 Exceptions.

605.202-70 Foreign acquisitions.

605.207-70 Acquisitions available from only
one responsible source.

Subpart 605.3—Synopsis of Contract Awards

605.303 Announcement of contract awards.

Subpart 605.4—Release of Information

605.403 Requests from members of Congress.

605.404 Release of long-range acquisition es-
timates.

605.404-1 Release procedures.

Subpart 605.5—Paid Advertisements

605.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26164, July 11, 1988, unless
otherwise noted.

Subpart 605.2—Synopsis of Proposed Contract Actions

605.202 Exceptions.

605.202-70 Foreign acquisitions.

(a) *Policy.* In accordance with a Determination and Findings issued by the Assistant Secretary of State for Administration, the requirement for advance CBD notices for the Department's foreign acquisitions awarded by overseas contracting activities is waived. CBD notices may be published for any acquisition where the contracting officer decides that publication would be in the Department's best interests. This waiver shall remain in effect until May 19, 2001.

(b) *Procedures.* Contracting officers at overseas contracting activities are not required to prepare an individual determination and findings to document their decision to waive the CBD notice requirements.

(c) *Competition requirements.* Nothing in this section waives the requirement to obtain competition as required by FAR part 6 and DOSAR (48 CFR) part 606. Competition, including the use of written solicitation, shall be obtained in all cases to the extent feasible. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition.

(d) *Policy exclusion.* CBD waiver authority does not apply to local guard service contracts that exceed \$250,000. Local guard service contracts that exceed \$250,000 shall be synopsisized in the CBD. Option year prices shall be included when computing the applicability of this threshold.

[60 FR 39662, Aug. 3, 1995, as amended at 64 FR 43621, Aug. 11, 1999]

605.207-70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the work and the information a potential source must submit.

Subpart 605.3—Synopsis of Contract Awards

605.303 Announcement of contract awards.

(a) Contracting officers shall make information available on awards over \$10 million to the Office of Legislative Affairs, upon request, in sufficient time for an announcement by 5:00 p.m. Washington, DC time on the day of the award. This requirement applies only to awards made by domestic contracting activities where performance

605.403

will take place within the United States or its possessions.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999]

Subpart 605.4—Release of Information

605.403 Requests from members of Congress.

(a) The Procurement Executive is the agency head for the purposes of FAR 5.403(a).

[59 FR 66755, Dec. 28, 1994]

605.404 Release of long-range acquisition estimates.

605.404-1 Release procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 5.404-1(a) and the agency head for the purposes of FAR 5.404-1(b).

[55 FR 5774, Feb. 16, 1990]

Subpart 605.5—Paid Advertisements

605.502 Authority.

(a) For paid advertisements in newspapers within the United States, the head of the contracting activity is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in newspapers outside the United States, the head of the contracting activity is the agency's head's designee for the purposes of FAR 5.502(a). When the head of the contracting activity is the contracting officer for the acquisition, no further approvals are necessary.

[59 FR 66755, Dec. 28, 1994]

PART 606—COMPETITION REQUIREMENTS

Subpart 606.2—Full and Open Competition After Exclusion of Sources

Sec.

606.202 Establishing or maintaining alternate sources.

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Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

606.302-4 International agreement.

606.302-6 National security.

606.302-7 Public interest.

606.303-1 Requirements.

606.304 Approval of the justification.

606.304-70 Acquisitions by overseas posts.

606.370 Department of State standardization program.

Subpart 606.5—Competition Advocates

606.501 Requirement.

606.501-70 Overseas posts.

606.570 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

The Procurement Executive is the agency head for the purposes of FAR 6.202.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(b)(4) The Procurement Executive is the agency head for the purposes of FAR 6.302-1(b)(4).

[59 FR 66755, Dec. 28, 1994]

606.302-4 International agreement.

(b)(2) In accordance with FAR 6.302-4, guard services shall be acquired from the host government only when it is the sole available source.

[59 FR 66755, Dec. 28, 1994]

Department of State

606.304-70

606.302-6 National security.

(b) This subsection applies to all acquisitions involving national security information, regardless of dollar amount. In no case shall information be classified in order to restrict competition. Information may be classified only when its authorized disclosure could be expected to cause damage to national security.

(c) (1) The Chief, Controls Division, Office of Intelligence Liaison, Directorate for Coordination, Bureau of Intelligence and Research, is responsible for reviewing and certifying on any proposed acquisitions derived from or funded or administered by intelligence community agencies that involve sensitive compartmented information and ensuring that the provisions of Executive Order 12958 and FAR 6.302-6 have been met. The Chief, Information Security Programs Division, Office of Information Security Technology, Bureau of Diplomatic Security, is responsible for reviewing and certifying on all other proposed acquisitions funded by the Department of State that involve national security information and ensuring that the provisions of Executive Order 12958 and FAR 6.302-6 have been met. When disclosure of the Department's needs through full and open competition would compromise national security, the Justification for Other than Full and Open Competition shall include the following specific information:

(i) How national security would be compromised if the Department of State's (or other agencies') needs were disclosed in the Commerce Business Daily;

(ii) Why the CBD synopsis cannot be worded in such a manner that national security would not be compromised;

(iii) Necessity for access to classified information to prepare technical and/or cost proposal and level of security clearance required;

(iv) Necessity for access to classified information to perform the proposed contract and level of security clearance required;

(v) Number and value of contracts that the justification covers; and

(vi) A statement as follows: "I hereby certify that the national security concerns of the referenced acquisition(s)

meet the criteria set forth in Executive Order 12958 and FAR 6.302-6".

(2) Any acquisition involving national security information shall be publicized in the Commerce Business Daily unless disclosure of the agency's needs would compromise national security.

(3) The contracting officer is responsible for soliciting offers from as many potential sources as is practicable under the circumstances. However, given the sensitivity required for acquisitions involving national security information, it is expected that requirements offices will work closely with the contracting officer in maximizing competition.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999]

606.302-7 Public interest.

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved to the Secretary of State.

606.303-1 Requirements.

Justifications for contract actions prescribed in FAR 6.303-1(d) shall be forwarded by the contracting officer to A/OPE for transmittal to the Office of the United States Trade Representative.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66755, Dec. 28, 1994]

606.304 Approval of the justification.

(a) (2) The approval authority for a proposed contract over \$500,000 but not exceeding \$10,000,000 for domestic contracting activities that do not have a competition advocate is the Department Competition Advocate.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999]

606.304-70 Acquisitions by overseas posts.

The Departmental Competition Advocate is the approval authority for the purposes of FAR 6.304(a)(3). This authority is not redelegable. Any such justification must be transmitted

606.370

through the Principal Officer at the overseas post.

[59 FR 66756, Dec. 28, 1994]

606.370 Department of State standardization program.

(a) It is the Department's policy to promote full and open competition in all procurement actions. The authority at 41 U.S.C. 253(c)(1) shall be used with respect to standardization when only specified makes and models of equipment will satisfy the Department's needs and only one source is available. This policy applies to all acquisitions involving standardization, regardless of dollar amount.

(b) Contracts awarded under the authority at 41 U.S.C. 253(c)(1) shall be supported by the written justification described in FAR 6.303. The contracting officer, requirements office, procuring activity competition advocate, and the Procurement Executive shall approve all Justifications for Other than Full and Open Competition that cite standardization of technical equipment as justification to restrict competition. The Administrative Officer at each post is the procuring activity competition advocate for that post and the requirements office at post is the embassy functional office responsible for identifying the need to contract.

(c) Procurement of specified makes and models of technical equipment and systems, for which there is only one source of supply, is considered other than full and open competition. Such procurements shall be supported by an approved Justification for Other than Full and Open Competition. The justification shall include the content requirements of FAR 6.303-2. The justification shall also address potential cost savings in areas such as inventory, operations, training, maintenance, repairs, and administrative and management support. Areas of consideration for potential cost savings shall be supported by detailed estimates as attachments to the justification. Justifications shall specify an effective period, which shall bear a reasonable relationship to the life of the technical equipment. The effective period shall not ex-

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ceed six years with a review at the end of the first three years. Periodic reviews shall be made during the standardization period to determine whether the standardization should be continued, revised or canceled.

[59 FR 66756, Dec. 28, 1994]

Subpart 606.5—Competition Advocates

606.501 Requirement.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Department Competition Advocate.

(b) A contracting activity competition advocate has been designated for A/LM/AQM. The Department Competition Advocate is the activity competition advocate for all other domestic contracting activities.

[59 FR 66756, Dec. 28, 1994, as amended at 64 FR 43622, Aug. 11, 1999]

606.501-70 Overseas posts.

The Administrative Officer at each overseas post is the competition advocate for that post.

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206-70, Competition Advocate/Ombudsman, in all solicitations exceeding the simplified acquisition threshold.

[64 FR 43622, Aug. 11, 1999]

PART 607—ACQUISITION PLANNING

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR subpart 1.3.

Subpart 607.1—Acquisition Plans

607.103 Agency-head responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 7.103.

[55 FR 5774, Feb. 16, 1990]

**PART 609—CONTRACTOR
QUALIFICATIONS**

**Subpart 609.2—Qualifications
Requirements**

Sec.

609.202 Policy.

609.206 Acquisitions subject to qualification requirements.

609.206-1 General.

**Subpart 609.4—Debarment, Suspension,
and Ineligibility**

609.403 Definitions.

609.403-70 DOSAR definitions.

609.404 List of parties excluded from Federal procurement and nonprocurement programs.

609.405 Effect of listing.

609.405-1 Continuation of current contracts.

609.405-2 Restrictions on subcontracting.

609.405-70 Termination action decision.

609.406 Debarment.

609.406-1 General.

609.406-3 Procedures.

609.407 Suspension.

609.407-1 General.

609.407-3 Procedures.

**Subpart 609.5—Organizational and
Consultant Conflicts of Interests**

609.503 Waiver.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

**Subpart 609.2—Qualifications
Requirements**

609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

609.206 Acquisitions subject to qualification requirements.

609.206-1 General.

(b) The authority prescribed in FAR 9.206-1(b) is delegated, without power of redelegation, to the head of the contracting activity.

[64 FR 43622, Aug. 11, 1999]

**Subpart 609.4—Debarment,
Suspension, and Ineligibility**

609.403 Definitions.

Debarring official means the Procurement Executive.

Suspending official means the Procurement Executive.

609.403-70 DOSAR definitions.

Fact-finding official means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

Notice means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406-3 and FAR 9.407-3.

609.404 List of parties excluded from Federal procurement and nonprocurement programs.

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66756, Dec. 28, 1994]

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d) In accordance with a FAR class deviation granted by the Procurement Executive, the following actions apply to actions awarded by DOS contracting activities:

(1)(i) Contracting officers at overseas contracting activities may rely on the debarment certification submitted by

bidders/offerors (FAR 52.209-5) as proof of eligibility for award when access to the current "Lists of Parties Excluded from Procurement Programs" is not reasonably available. For contracts which require A/OPE review and approval, the contracting officer should request that A/OPE perform the required review if the list is not available.

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition threshold, contracting officers need not consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", either in hard copy or electronic form, prior to awarding a procurement action exceeding the simplified acquisition threshold.

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43622, Aug. 11, 1999]

609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405-70.

609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-2.

609.405-70 Termination action decision.

(a) Prior to making a decision to terminate, based on the consideration listed below, the contracting officer shall have the proposed action reviewed and approved by:

- (1) The Office of the Legal Adviser;
- (2) An individual one level above the contracting officer; and
- (3) For overseas posts, A/OPE.

(b) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(c) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

- (1) Seriousness of the cause for debarment or suspension;
- (2) Extent of contract performance;
- (3) Potential costs to the Government;
- (4) Urgency of the requirement and the impact of the delay; and/or
- (5) Availability of other safeguards to protect the Government's interests.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

609.406 Debarment.

609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406-1(c).

609.406-3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office. The Office of the Inspector General shall provide to the Procurement Executive a copy of its investigation report. The contracting officer shall provide to the

Department of State

609.406-3

Procurement Executive a copy of his or her intended actions in response to the Office of the Inspector General report.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406-2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406-3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel

shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406-3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406-3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official within 30 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406-3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational element affected by the determination.

609.407

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406-3(d) and FAR 9.406-3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 64 FR 43622, Aug. 11, 1999]

609.407 Suspension.

609.407-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407-1(d).

609.407-3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406-3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407-2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407-3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407-3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406-3(a), except that the suspending official shall process the notice in accordance with FAR 9.407-3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407-3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

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Subpart 609.5—Organizational and Consultant Conflicts of Interests

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

PART 611—DESCRIBING AGENCY NEEDS

Sec.

611.002 Policy.

611.002-70 Metric system implementation.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

Subpart 611.5—Liquidated Damages

611.502 Policy.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43622, Aug. 11, 1999, unless otherwise noted.

611.002 Policy.

611.002-70 Metric system implementation.

(a) *Policy.* The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), requires Federal agencies to establish implementing guidelines pursuant to metric policy to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This section establishes the Department of State's metric conversion guidelines.

(b) *Applicability.* This section applies to all DOS acquisitions, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(c) *Definitions.*

Dual system means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid system means the use of both traditional and hard metric values in specifications, standards, supplies and services.

Measurement sensitive means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations, etc.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures.

Metriation means any act that increases metric system use, including metric training and initiation or conversion of measurement sensitive processes and systems to the metric system.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the "inch-pound system." The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) *Procedures.* (1) DOS contracting activities shall implement the metric system in a manner consistent with 15 U.S.C. 205a, *et seq.*

(2) All DOS contracting activities shall use the metric system in acquisition consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system by acquiring commercially available metric products and services that meet the Department's needs whenever practical. Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms.

The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available from the National Technical Information Service; and

(ii) For contracts expected to exceed \$500,000 contracting officers shall return to the requirements office all specifications and statements of work that are not expressed in some form of metric terms unless the requirements office has prepared a justification, for the approval of the contracting officer, for the use of non-metric specifications or statements of work. The justification shall be in a format as prescribed by the head of the contracting activity. Option year prices shall be considered when computing the \$500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules.

(5) Valid justifications for non-metric specifications or statements of work include, but are not limited to:

(i) Existing specifications or standards are in inch-pound units, unless conversion of the existing specifications or standards is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components should be avoided if the total cost of the retrofit, including redesign costs, exceeds \$50,000;

(ii) Metric is not the accepted industry system with respect to a business-related activity; however, soft, hybrid, or dual systems may be used during the transition to hard metric;

(iii) The use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prior to the release of the solicitation. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation for the disapproval.

(7) The in-house operating metric costs shall be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric specifications. All contracting activities and requirements offices shall

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maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

48 CFR Ch. 6 (10-1-01 Edition)**Subpart 611.1—Selecting and Developing Requirements Documents****611.103 Market acceptance.**

(a) The head of the contracting activity is the agency head for the purpose of FAR 11.103(a).

Subpart 611.5—Liquidated Damages**611.502 Policy.**

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.502(d).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 613.3—Simplified Acquisition Methods

Sec.

613.303 Blanket purchase agreements (BPAs).

613.303-5 Purchases under BPAs.

613.305 Imprest funds and third party drafts.

613.305-3 Conditions for use.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).

613.303-5 Purchases under BPAs.

(c) In accordance with FAR 13.303-5(c), BPAs shall be awarded to small businesses to the maximum extent practicable.

613.305 Imprest funds and third party drafts.

613.305-3 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.305-3(a).

PART 614—SEALED BIDDING

Subpart 614.2—Solicitation of Bids

Sec.

614.201 Preparation of Invitation for Bids (IFB).

614.201-70 Use of English language.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

614.402-70 Waiver of public opening of bids.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

614.407 Mistakes in bids.

614.407-3 Other mistakes disclosed before award.

614.407-4 Mistakes after award.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26168, July 11, 1988, unless otherwise noted.

Subpart 614.2—Solicitation of Bids

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

614.201 Preparation of Invitation for Bids (IFB).

614.201-70 Use of English language.

Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402-1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

614.402-70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

614.404

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

The authority to make the determination prescribed in FAR 14.404-1(c) is delegated, without power of redelegation, to the head of the contracting activity. The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

(f) The head of the contracting activity is the agency head for the purpose of FAR 14.404-1(f). This authority is not redelegable.

[53 FR 26168, July 11, 1988, as amended at 59 FR 66758, Dec. 28, 1994; 64 FR 43623, Aug. 11, 1999]

614.407 Mistakes in bids.

614.407-3 Other mistakes disclosed before award.

The authority to make the determinations prescribed in FAR 14.407 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.407-3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

[53 FR 26168, July 11, 1988. Redesignated and amended at 64 FR 43623, Aug. 11, 1999]

614.407-4 Mistakes after award.

The authority to make all determinations prescribed in FAR 14.407-4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.407-4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before making any determinations pursuant to this subsection.

[53 FR 26168, July 11, 1988. Redesignated and amended at 64 FR 43623, Aug. 11, 1999]

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PART 615—CONTRACTING BY NEGOTIATION

Subpart 615.2—Solicitation and Receipt of Proposals and Information

Sec.

615.204 Contract format.

615.205 Issuing solicitations.

615.205-70 Use of English language.

Subpart 615.3—Source Selection

615.303 Responsibilities.

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 15.204(e).

615.205 Issuing solicitations.

(a) Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205-5(a). However, the list of those firms which actually submit proposals is not releasable. Requests for information other than solicitation mailing lists shall be handled under the Freedom of Information Act.

615.205-70 Use of English language.

The requirements of DOSAR 614.201-70 also apply when contracting by negotiation.

Subpart 615.3—Source Selection

615.303 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 15.303(a).

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Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

(a)(4) The contact points for unsolicited proposals are the heads of the contracting activities.

PART 616—TYPES OF CONTRACTS

Sec.

616.000 Scope of part.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Ordering.

616.506 Solicitation provisions and contract clauses.

616.506-70 DOSAR contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

616.000 Scope of part.

The contracting officer may use any of the contract types described in FAR part 16 for acquisitions made under simplified acquisition procedures. The contracting officer shall document his/her decision to use a contract type in accordance with the requirements of FAR part 16.

[60 FR 39963, Aug. 3, 1995]

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

Contracting officers at domestic contracting activities may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203-4(d) and after obtaining the approval of the head of the contracting activity. Overseas posts may use the clause at 652.216-71, Price

Adjustment, when procuring continuing services (*e.g.*, guard, janitorial, building maintenance, and gardening). Posts shall obtain A/OPE approval for any price adjustment clause that differs from the clause at 652.216-71.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207-3.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Ordering.

(b)(4) The Departmental Competition Advocate is designated the task and delivery order contract ombudsman.

[64 FR 43624, Aug. 11, 1999]

616.506 Solicitation provisions and contract clauses.

616.506-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216-70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216-20, Definite Quantity, or the clause at FAR 52.216-21, Requirements, or the clause at FAR 52.216-22, Indefinite Quantity, is used.

[53 FR 26169, July 11, 1988. Redesignated at 64 FR 43624, Aug. 11, 1999]

PART 617—SPECIAL CONTRACTING METHODS

Subpart 617.1—Multiyear Contracting

Sec.

617.104 General.

617.105 Policy.

617.105-1 Uses.

617.108 Congressional notification.

Subpart 617.2—Options

617.201 Definitions.

617.201-70 DOSAR Definitions.

617.204 Contracts.

617.104

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.503 Determination and findings requirements.

617.504–70 Ordering procedures.

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

Subpart 617.1—Multiyear Contracting

SOURCE: 64 FR 43624, Aug. 11, 1999, unless otherwise noted.

617.104 General.

(b) The Procurement Executive is the agency head for the purpose of FAR 17.104(b).

617.105 Policy.

617.105–1 Uses.

(d) Every multiyear contract shall comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant financial management office/comptroller.

617.108 Congressional notification.

(a) The Procurement Executive is the agency head for the purposes of FAR 17.108(a).

Subpart 617.2—Options

617.201 Definitions.

617.201–70 DOSAR Definitions.

Evaluated option means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

Price option means an option where the amount for the option is specified in or is reasonably determinable from the terms of the basic contract, as described in FAR 17.207(f) (1) through (5).

Unevaluated option means an option that is not included in the evaluation for award purposes.

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Unpriced option means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

617.204 Contracts.

(e) The Procurement Executive shall approve any solicitations or contracts which exceed the five (5) year maximum length for supplies or services.

[59 FR 66759, Dec. 28, 1994]

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.503 Determination and findings requirements.

The authority to make the determination prescribed in FAR 17.503 is delegated to the head of the contracting activity.

[64 FR 43624, Aug. 11, 1999]

617.504–70 Ordering procedures.

(a) Department deputy assistant secretaries or their equivalents are authorized to execute Economy Act IAAs. Department contracting officers also are authorized to execute Economy Act IAAs, as prescribed in FAR 17.504(a).

(b) Department of State form DS–1921, Award/Modification of Interagency Acquisition Agreement (illustrated in part 653), shall be used for all Economy Act IAAs where the Department is the requesting agency. It shall also be used for Economy Act IAAs where the Department is the servicing agency if the requesting agency does not have a similar form that provides the same information.

[59 FR 66759, Dec. 28, 1994, as amended at 64 FR 43624, Aug. 11, 1999]

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS PROGRAMS

Subpart 619.2—Policies

Sec.

619.201 General policy.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Subpart 619.5—Set-Asides for Small Business

619.501 General.

619.505 Rejecting Small Business Administration recommendations.

619.506 Withdrawing or modifying set asides.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

619.705-1 General support of the program.

619.705-3 Preparing the solicitation.

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619.705-6-70 Reporting responsibilities.

619.708-70 Solicitation provisions and contract clauses.

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

619.800 General.

619.801 Definitions.

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

619.803-71 Simplified procedures for 8(a) acquisitions under MOUs.

619.804 Evaluation, offering, and acceptance.

619.804-2 Agency offering.

619.804-3 SBA acceptance.

619.804-3-70 SBA acceptance under MOUs for acquisitions exceeding \$100,000.

619.805 Competitive 8(a).

619.805-2 Procedures.

619.806 Pricing the 8(a) contract.

619.808 Contract negotiation.

619.808-1 Sole source.

619.810 SBA appeals.

619.811 Preparing the contracts.

619.811-1 Sole source.

619.811-2 Competitive.

619.811-3 Contract clauses.

619.812 Contract administration.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26170, July 11, 1988, unless otherwise noted.

Subpart 619.2—Policies

619.201 General policy.

(a) The Operations Director, Office of Small and Disadvantaged Business Utilization (A/SDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603-70), or designee, is responsible for establishing in coordination with the A/SDBU Operations Director annual goals for the DOS small and disadvantaged business program.

(c) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations,

procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of the simplified acquisition threshold, including commercial items using the simplified procedures of FAR subpart 13.5, to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides. This includes proposed contract modifications for new or additional requirements which do not fall within the original scope of the contract and which exceed the simplified acquisition threshold. This does not include the exercising of contract options;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or non-responsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small and small disadvantaged business matters as authorized by the A/SDBU Operations Director.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995; 64 FR 43624, Aug. 11, 1999]

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Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the A/SDBU Operations Director shall perform the action so required.

Subpart 619.5—Set-Asides for Small Business

619.501 General.

(c) Contracting officers shall use Department of State Form DS-1910, Small Business Review—Actions Above the Simplified Acquisition Threshold, to document set-aside decisions.

[59 FR 66759, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995; 64 FR 43624, Aug. 11, 1999]

619.505 Rejecting Small Business Administration recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

619.506 Withdrawing or modifying set asides.

(b) The Procurement Executive shall resolve disagreements between the A/SDBU Operations Director and the contracting officer.

[59 FR 66759, Dec. 28, 1994]

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

The contracting officer shall transmit to the A/SDBU Operations Director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small busi-

ness concern is not responsible, as required by FAR 19.602-1(a).

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

619.705-1 General support of the program.

It is the Department's policy to incorporate its current fiscal year goals as negotiated with the SBA into all pertinent Department solicitations, in addition to the standard subcontract clauses. Incorporation of the goals does not require that large business prime contractors must subcontract, but does require that to the extent they plan to subcontract, specific goals be established for doing business with small, small disadvantaged, and women-owned firms. Where funds are available, an incentive clause such as that found in FAR 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, is encouraged.

[59 FR 66760, Dec. 28, 1994]

619.705-3 Preparing the solicitation.

To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

[64 FR 43624, Aug. 11, 1999]

619.705-4 Reviewing the subcontracting plan.

A/SDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. A/SDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

619.705-6 Postaward responsibilities of the contracting officer.**619.705-6-70 Reporting responsibilities.**

(a) The contracting officer shall forward to the A/SDBU Operations Director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected annually and semiannually, using Standard Form 295, Summary Subcontracting Report, for the annual submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semi-annual submissions. The head of the contracting activity shall forward these reports to the A/SDBU Operations Director, not later than the 30th day of the month following the close of the reporting period.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66760, Dec. 28, 1994]

619.708-70 Solicitation provisions and contract clauses.

The contracting officer shall insert a provision substantially the same as the provision at 652.219-70, Department of State Subcontracting Goals, in solicitations whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, is used.

[59 FR 66760, Dec. 28, 1994]

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

SOURCE: 64 FR 43624, Aug. 11, 1999, unless otherwise noted.

619.800 General.

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to

the Senior Procurement Executives of various Federal contracting activities. The Department of State has signed an MOU with SBA, effective May 6, 1998. Under the MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

619.803 Selecting acquisitions for the 8(a) program.**619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).**

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.803-71 Simplified procedures for 8(a) acquisitions under MOUs.

Contracting activities may use the simplified acquisition procedures of FAR part 13 and DOSAR part 613 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) participants. The \$100,000 limitation for use of FAR part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the agency contracting officer shall establish the price with the selected 8(a) contractor.

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(d) The contracting officer shall issue the purchase order or contract directly to the 8(a) firm in accordance with the provisions of FAR part 13 and DOSAR part 613. The contracting officer shall insert FAR clause 52.219-14, Limitations on Subcontracting, and DOSAR clause 652.219-71, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection. The contracting officer's title shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose, shall sign the purchase order or contract as a third party.

(e) The contracting officer shall forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

619.804 Evaluation, offering, and acceptance.

619.804-2 Agency offering.

(a) When applicable, this notification shall identify that the offering is in accordance with the MOU identified in 619.800.

619.804-3 SBA acceptance.

619.804-3-70 SBA acceptance under MOUs for acquisitions exceeding \$100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting agency.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the contracting agency may assume that the requirement has been accepted and proceed with the acquisition.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

619.805 Competitive 8(a).

619.805-2 Procedures.

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see FAR part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding \$100,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

619.806 Pricing the 8(a) contract.

(a) When required by FAR subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 619.800.

619.808 Contract negotiation.

619.808-1 Sole source.

(a) If the acquisition is conducted under an MOU cited in 619.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 619.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a)

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participant, the SBA may participate in the negotiations.

619.810 SBA appeals.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

619.811 Preparing the contracts.

619.811-1 Sole source.

(d) If the award is to be made under an MOU cited in 619.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall insert FAR 52.219-14, Limitations on Subcontracting, and DOSAR 652.219-71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding \$100,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, i.e., an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate form.

619.811-2 Competitive.

(a) If the award is made under the delegation of 8(a) contracting authority, competitive contracts for 8(a) firms shall be prepared in accordance

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with the same standards as 8(a) sole source contracts. See 619.811-1.

(b) If the acquisition is conducted under the MOU cited in 619.800, the process for obtaining signatures shall be as specified in 619.811-1(d)(4).

619.811-3 Contract clauses.

(d)(3) The contracting officer shall insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), in competitive solicitations and contracts exceeding \$100,000 when the acquisition is processed under the MOU cited in 619.800.

(f) The contracting officer shall insert the clause at FAR 52.219-14, Limitations on Subcontracting, and DOSAR 652.219-71, Section 8(a) Direct Awards, in all solicitations and contracts that are processed under the MOU cited at 619.800. The clauses at FAR 52.219-11, Special 8(a) Contract Conditions; 52.219-12, Special 8(a) Subcontract Conditions; and, 52.219-17, Section 8(a) Award, shall not be used.

619.812 Contract administration.

(d) The head of the contracting activity is the agency head for the purposes of FAR 19.812(d). Awards under the MOU cited in 619.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at DOSAR 652.219-71, Section 8(a) Direct Awards, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 622.3—Contract Work Hours and Safety Standards Act

Sec.

622.302 Liquidated damages and overtime pay.

Subpart 622.4—Labor Standards for Contracts Involving Construction

622.404 Davis-Bacon Act wage determinations.

622.404-3 Procedures for requesting wage determinations.

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- 622.404-6 Modifications of wage determinations.
- 622.404-7 Correction of wage determinations containing clerical errors.
- 622.404-11 Wage determination appeals.
- 622.406 Administration and enforcement.
- 622.406-1 Policy.
- 622.406-8 Investigations.
- 622.406-9 Withholding from or suspension of contract payments.
- 622.406-10 Disposition of disputes concerning construction contract labor standards enforcement.
- 622.406-11 Contract terminations.
- 622.406-12 Cooperation with the Department of Labor.

Subpart 622.6—Walsh-Healey Public Contracts Act

- 622.604 Exemptions.
- 622.604-2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

- 622.803 Responsibilities.
- 622.807 Exemptions.

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

- 622.1303 Waivers.
- 622.1308 Contract clauses.

Subpart 622.14—Employment of Workers with Disabilities

- 622.1403 Waivers.
- 622.1408 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 622.3—Contract Work Hours and Safety Standards Act

622.302 Liquidated damages and overtime pay.

The authority to make the determination prescribed in FAR 22.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5774, Feb. 16, 1990]

Subpart 622.4—Labor Standards for Contracts Involving Construction

SOURCE: 55 FR 5774, Feb. 16, 1990, unless otherwise noted.

622.406-9

622.404 Davis-Bacon Act wage determinations.

622.404-3 Procedures for requesting wage determinations.

The cognizant contracting activity (see 601.603-70) is the contracting agency for the purposes of FAR 22.404-3(b) and (e).

622.404-6 Modifications of wage determinations.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-6.

(b)(6) The head of the contracting activity is the agency head's designee for the purposes of FAR 22.404-6(b)(6).

[55 FR 5774, Feb. 16, 1990, as amended at 59 FR 66760, Dec. 28, 1994]

622.404-7 Correction of wage determinations containing clerical errors.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-7.

622.404-11 Wage determination appeals.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-11.

622.406 Administration and enforcement.

622.406-1 Policy.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-1(a).

622.406-8 Investigations.

(a) The chief of the contracting activity is responsible for conducting labor standards investigations as prescribed in FAR 22.406-8(a).

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 22.406-8(d).

622.406-9 Withholding from or suspension of contract payments.

The authority to suspend contract payments pursuant to FAR 22.406-9(b) is delegated, without power of redelegation, to the head of the contracting activity.

622.406-10

622.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-10(b).

622.406-11 Contract terminations.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-11.

622.406-12 Cooperation with the Department of Labor.

Any information furnished to the Department of Labor pursuant to FAR 22.406-12(a) shall be submitted through the head of the contracting activity.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions

622.604-2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604-2(c)(1).

Subpart 622.8—Equal Employment Opportunity

622.803 Responsibilities.

(c) The Procurement Executive is the agency head for the purpose of FAR 22.803(c).

[64 FR 43626, Aug. 11, 1999]

622.807 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

622.1303 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1303.

622.1308 Contract clauses.

The Procurement Executive is the agency head for the purposes of FAR 22.1308 (a)(2) and (c).

[55 FR 5775, Feb. 16, 1990]

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Subpart 622.14—Employment of Workers with Disabilities

622.1403 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

622.1408 Contract clause.

The Procurement Executive is the agency head for the purposes of FAR 22.1408.

[55 FR 5775, Feb. 16, 1990]

PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORK-PLACE

Subpart 623.1—Pollution Control and Clean Air and Water

Sec.

623.104 Exemptions.

623.107 Compliance responsibilities.

Subpart 623.3—Hazardous Material Identification and Material Safety Data

623.302-70 Policy.

Subpart 623.4—Use of Recovered Materials

623.400 Scope of subpart.

623.404 Procedures.

Subpart 623.5—Drug-Free Workplace

623.506 Suspension of payments, termination of contract, and debarment and suspension actions.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

623.107 Compliance responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 23.107.

Department of State

624.202

Subpart 623.3—Hazardous Material Identification and Material Safety Data

623.302–70 Policy.

Any work which affects the safety and/or health of post personnel, including the handling of hazardous materials, shall comply with the applicable requirements of the Department of State Safety/Health and Environmental Management Resource Guide (6 FAM 606.7). Requirements offices shall ensure that any contractor operations and activities, whether sponsored by the post or other Department organization, are closely coordinated with the Post Occupational Safety and Health Officer during both planning and implementation phases.

[59 FR 66760, Dec. 28, 1994]

Subpart 623.4—Use of Recovered Materials

SOURCE: 64 FR 43626, Aug. 11, 1999, unless otherwise noted.

623.400 Scope of subpart.

The affirmative procurement program is applicable to all domestic acquisitions of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.404 Procedures.

(b)(2) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase EPA designated items containing other than recovered materials only if one of the exemptions listed in FAR 23.404(b)(3) applies. If the requirements office determines to acquire EPA designated items that do not contain recovered materials, a written justification must be submitted to the head of the contracting activity.

(i) Contracts for the purchase of, or requiring the supply of, any EPA designated item shall require that the item conform to the EPA guidelines,

unless an exception has been approved by the head of the contracting activity in accordance with FAR 23.404(b)(3) and DOSAR 623.404(b)(3).

(ii) Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-bid and pre-proposal conferences, when appropriate. Other means of promotion may include a specific notice on a solicitation's cover letter, calling attention to the requirement for recovered materials.

(iii) Contracting officers shall include FAR clause 52.223–9 to ensure that contractors estimate, certify, and verify the amount of recovered material used in the performance of the contract.

(iv) The effectiveness of the program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered materials is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices, or an unacceptable level of performance.

(3) The head of the contracting activity is the agency head for the purpose of FAR 23.404(b)(3).

Subpart 623.5—Drug-Free Workplace

623.506 Suspension of payments, termination of contract, and debarment and suspension actions.

The authority to approve the determination prescribed in FAR 23.506(e) is reserved to the Secretary of State.

[55 FR 5775, Feb. 16, 1990]

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 624.2—Freedom of Information Act

624.202 Policy.

DOS regulations implementing the Freedom of Information Act (5 U.S.C.

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552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171, Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

[53 FR 26172, July 11, 1988]

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American Act—Supplies

Sec.

625.102 Policy.

625.105 Evaluating offers.

625.108 Excepted articles, materials, and supplies.

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.

625.203 Evaluating offers.

625.204 Violations.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.

625.300–70 Overseas acquisitions.

625.302 Policy.

625.304 Excess and near-excess foreign currencies.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

Subpart 625.70—Arab League Boycott and Related Provisions

625.7001 Policy.

625.7002 Solicitation provision and contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 625.1—Buy American Act—Supplies

625.102 Policy.

(a)(3) The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity.

(b)(2) The authority to make the determination prescribed in FAR 25.102(b)(2) is delegated, without power

of redelegation, to the head of the contracting activity.

[59 FR 66762, Dec. 28, 1994]

625.105 Evaluating offers.

The authority to make the determinations prescribed in FAR 25.105 is delegated, without power of redelegation, to the head of the contracting activity.

625.108 Excepted articles, materials, and supplies.

A/OPE is the DOS central agency control point for furnishing to the appropriate FAR Council the documentation prescribed in FAR 15.108(b) and (c).

[53 FR 26172, July 11, 1988, as amended at 59 FR 66762, Dec. 28, 1994]

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.

(a)(2) The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity.

(b) The authority to make the determination prescribed in FAR 25.202(b) is delegated, without power of redelegation, to the head of the contracting activity.

[59 FR 66762, Dec. 28, 1994]

625.203 Evaluating offers.

The head of the contracting activity is the agency head for the purposes of FAR 25.203 (a) and (b).

[59 FR 66762, Dec. 28, 1994]

625.204 Violations.

The Procurement Executive is the agency head for the purposes of FAR 25.204.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.

625.300–70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

Department of State

626.200-70

625.302 Policy.

The authority to make the determination prescribed in FAR 25.302(b)(3) is delegated, without power of redelegation, to the head of the contracting activity. The authority prescribed in FAR 25.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

625.304 Excess and near-excess foreign currencies.

The authority to make the determination prescribed in FAR 25.304(c) is delegated to the head of the contracting activity without power of redelegation.

[53 FR 26172, July 11, 1988, as amended at 59 FR 66762, Dec. 28, 1994]

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

The authority to approve exceptions for other contracts in excess of the simplified acquisition threshold is delegated, without power of redelegation, to the head of the contracting activity.

[60 FR 39663, Aug. 3, 1995]

Subpart 625.70—Arab League Boycott and Related Provisions

SOURCE: 64 FR 43626, Aug. 11, 1999, unless otherwise noted.

625.7001 Policy.

(a) Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Public Law 103-236) prohibits the Department of State from entering into any contract that expends funds appropriated to the Department of State:

(1) With a foreign person that complies with the Arab League Boycott of Israel; or,

(2) With any foreign or United States person that discriminates in the award of subcontracts on the basis of religion.

(b) This authority has continuing effect. Section 565 requires specific language to be included in all Invitations for Bids and Requests for Proposals with respect to a contract subject to Section 565's prohibitions.

(c) Section 565 may be waived on a country-by-country basis if such a waiver is in the national interest and necessary to carry on diplomatic functions and is approved by the Secretary of State or his/her designee.

625.7002 Solicitation provision and contract clause.

Contracting officers shall include the following provision and clause in all solicitations and contracts exceeding the simplified acquisition threshold, unless a waiver has been granted in accordance with DOSAR 625.7001(c):

(a) 652.225-70, Arab League Boycott of Israel; and,

(b) 652.225-71, Section 8(a) of the Export Administration Act, as amended.

PART 626—OTHER SOCIOECONOMIC PROGRAMS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43627, Aug. 11, 1999, unless otherwise noted.

Subpart 626.2—Minority Business Enterprise

626.200-70 Solicitation provision.

The contracting officer shall insert the provision at 652.226-70, Certification of Status as a Minority Business Enterprise, in all solicitations issued by domestic contracting activities. If the solicitation is being issued using electronic commerce, the contracting officer shall use the provision with its Alternate I.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 627—PATENTS, DATA, AND COPYRIGHTS

Subpart 627.2—Patents

Sec.

627.203 Patent indemnification of Government by contractor.

627.203-6 Clause for Government waiver of indemnity.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

627.304 Procedures.

627.304-1 General.

627.304-5 Appeals.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

Subpart 627.2—Patents

627.203 Patent indemnification of Government by contractor.

627.203-6 Clause for Government waiver of indemnity.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.203-6.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.303. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304 Procedures.

627.304-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-1. Questions regarding fact-finding procedures as specified in FAR 27.304-1(a)(4) shall be referred to A/OPE. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304-5 Appeals.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-5. Questions regarding the appeals procedure as specified in FAR 27.304-5(b) shall be referred to A/OPE.

PART 628—BONDS AND INSURANCE

Subpart 628.1—Bonds

Sec.

628.101 Bid guarantees.

628.101-1 Policy on use.

628.106-6 Furnishing information.

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

628.203-7 Exclusion of individual sureties.

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.

628.306 Insurance under fixed-price contracts.

628.307 Insurance under cost-reimbursement contracts.

Subpart 628-70—Indemnification

628.7001 DOSAR contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 628.1—Bonds

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

628.101 Bid guarantees.

628.101-1 Policy on use.

(c) The Procurement Executive is the agency head's designee for the purposes of FAR 28.101-1(c).

628.106-6 Furnishing information.

(c) The head of the contracting activity is the agency head's designee for the purposes of FAR 28.106-6(c).

Department of State

628.7001

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the Office of the Inspector General.

[59 FR 66763, Dec. 28, 1994]

628.203-7 Exclusion of individual sureties.

The Procurement Executive is the agency head's designee for the purposes of FAR 28.203-7.

[59 FR 66763, Dec. 28, 1994]

Subpart 628.3—Insurance

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

628.305 Overseas workers' compensation and war-hazard insurance.

(a) It is the Department's policy that acquisitions for services, including construction but excluding personal services contracts, which require contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651-1654, as amended). For the purpose of this section only, "contractor personnel" includes individuals who are either:

(1) United States citizens or residents, or

(2) Hired in the United States or its possessions.

(b) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance, at a fixed rate for services and construction, to cover DOS contracts which will require performance overseas by United States citizens, residents, or those employed in the United States. In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries have been waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert the clause at 652.228-71, Worker's Compensation

Insurance (Defense Base Act)—Services. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

(c) Upon award of a contract which requires Defense Base Act insurance, the contracting officer shall notify the successful offeror of the name of the insurance broker from which the contractor should acquire insurance.

(d) The authority to request a waiver from the Secretary of Labor of a particular country, as set forth in FAR 28.305(d), is reserved to the Secretary of State. The Department has obtained blanket waivers from the Secretary of Labor for all contracts for services, including construction, awarded and/or performed overseas. The waivers apply to all individuals who are not employees hired in the United States, or who are not United States citizens or residents.

[59 FR 66763, Dec. 28, 1994, as amended at 64 FR 43627, Aug. 11, 1999]

628.306 Insurance under fixed-price contracts.

The contracting officer shall insert the provision at 652.228-74, Defense Base Act Insurance Rates—Limitation—Fixed-Price, in solicitations for fixed-price or construction contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

[64 FR 43627, Aug. 11, 1999]

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228-76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials, in solicitations for cost-reimbursement, labor-hour, or time-and-materials type contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

[64 FR 43627, Aug. 11, 1999]

Subpart 628-70—Indemnification

628.7001 DOSAR contract clause.

(a) Contractors should not ordinarily be required to assume risks which a

private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228–70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

PART 629—TAXES

Subpart 629.1—General

Sec.

629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202–70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401–70 DOSAR contract clause.

629.402 Foreign contracts.

629.402–1 Foreign fixed-price contracts.

629.402–1–70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 629.1—General

629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202–70 Exemptions from other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

629.303 Application of State and local taxes to Government contractors and subcontractors.

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

Department of State

632.006-4

629.402 Foreign contracts.

629.402-1 Foreign fixed-price contracts.

629.402-1-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229-71, Personal Property Disposition at Posts Abroad, in all solicitations and contracts performed overseas.

[64 FR 43627, Aug. 11, 1999]

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 631.1—Applicability

Sec.

631.101 Objectives.

Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.

631.205-6 Compensation for personal services.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66764, Dec. 28, 1994, unless otherwise noted.

Subpart 631.1—Applicability

631.101 Objectives.

The Procurement Executive is the agency head's designee for the purposes of FAR 31.101.

Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.

631.205-6 Compensation for personal services.

(g)(3) The head of the contracting activity is the agency head's designee for the purpose of FAR 31.205-6(g)(3).

[64 FR 43627, Aug. 11, 1999]

PART 632—CONTRACT FINANCING

Sec.

632.006 Reduction or suspension of contract payments upon finding of fraud.

632.006-1 General.

632.006-2 Definitions.

632.006-4 Procedures.

Subpart 632.1—Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

Subpart 632.4—Advance Payments

632.402 General.

632.404 Exclusions.

632.407 Interest.

Subpart 632.7—Contract Funding

632.702 Policy.

632.702-70 DOS policy.

632.703 Contract funding requirements.

632.703-3 Contracts crossing fiscal years.

632.705 Contract clauses.

632.705-70 DOSAR contract clause.

Subpart 632.8—Assignment of Claims

632.803 Policies.

Subpart 632.9—Prompt Payment

632.903 Policy.

632.908 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

632.006 Reduction or suspension of contract payments upon finding of fraud.

632.006-1 General.

The Procurement Executive is the agency head for the purpose of FAR 32.006-1.

[64 FR 43627, Aug. 11, 1999]

632.006-2 Definitions.

Remedy coordination official means the Assistant Inspector General for Investigations.

[64 FR 43627, Aug. 11, 1999]

632.006-4 Procedures.

The Procurement Executive is the agency head for the purposes of FAR 32.006-4.

[64 FR 43627, Aug. 11, 1999]

Subpart 632.1—Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

The Procurement Executive is the agency head for the purpose of FAR 32.114.

[64 FR 43627, Aug. 11, 1999]

Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

[64 FR 43627, Aug. 11, 1999]

Subpart 632.4—Advance Payments

632.402 General.

(b) Advance payments shall be authorized sparingly. Contracting officers should consider the use of partial payments, fast payments, or more frequent payments as alternatives to advance payments.

(c)(1)(iii) The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

632.404 Exclusions.

(a) Total advance payments may be authorized for the items listed in FAR 32.404(a), notwithstanding their designation as a commercial item and acquisition under FAR part 12 procedures.

[64 FR 43627, Aug. 11, 1999]

632.407 Interest.

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 32.407(d).

[59 FR 66764, Dec. 28, 1994]

Subpart 632.7—Contract Funding

SOURCE: 64 FR 43628, Aug. 11, 1999, unless otherwise noted.

632.702 Policy.

632.702-70 DOS policy.

The Department's policy is to provide full funding for all contracts, to the maximum extent practicable. FAR 32.704 and 32.705-2 provide for incremental funding of cost-reimbursement contracts. Fixed-price, labor-hour, and time-and-materials contracts for severable services may also be incrementally funded if full funding is not available at the time of contract award and the contracting officer executes a determination and findings, approved by the requirements office, justifying the need for incremental funding due to the unavailability of funds.

632.703 Contract funding requirements.

632.703-3 Contracts crossing fiscal years.

(b) The head of the contracting activity is the agency head for the purpose of FAR 32.703-3(b).

632.705 Contract clauses.

632.705-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.232-72, Limitation of Funds, in incrementally funded fixed-price, labor-hour, and time-and-materials solicitations and contracts for severable services.

Subpart 632.8—Assignment of Claims

632.803 Policies.

(b) The assignment of claims shall be prohibited for all personal services contracts. The assignment of claims shall also be prohibited for all contracts awarded and performed overseas, unless approval is received from the Procurement Executive. The Directors, Regional Procurement Support Offices may approve the assignment of claims

Department of State

for contracts under their administration after obtaining legal consultation.

[59 FR 66764, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

Subpart 632.9—Prompt Payment

632.903 Policy.

The authority to make the determination prescribed in FAR 32.903 is delegated, without power of redelegation, to the head of the contracting activity. Before making a determination concerning early invoice and contract financing payments, the head of the contracting activity shall consult with the Office of Fiscal Operations director, or designee.

[55 FR 5775, Feb. 16, 1990]

632.908 Contract clauses.

(a) The contracting officer may insert a clause substantially the same as the clause at 652.232-70, Payment Schedule and Invoice Submission (Fixed-Price), in fixed-price type solicitations and contracts.

(b) The contracting officer may insert a clause substantially the same as the clause at 652.232-71, Voucher Submission (cost-Reimbursement), in cost-reimbursement type solicitations and contracts.

[59 FR 66764, Dec. 28, 1994]

PART 633—PROTESTS, DISPUTES, AND APPEALS

Subpart 633.1—Protests

Sec.

633.102 General.

633.103 Protests to the agency.

633.104 Protests to GAO.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

633.214-70 Alternative dispute resolution.

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270-1 Scope of section.

633.270-2 Designation.

633.270-3 DOS support.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

633.214-70

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) shall be coordinated with the Office of the Legal Adviser.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

633.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

[64 FR 43628, Aug. 11, 1999]

633.104 Protests to GAO.

(a) General procedures. The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

[64 FR 43628, Aug. 11, 1999]

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.214-70 Alternative dispute resolution.

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

(b) *When to use ADR.* (1) *Factors favoring ADR.* Contracting officers should consider using ADR in those cases where:

(i) Only facts are in dispute;

(ii) The facts are clearly not favorable to the Government;

(iii) The anticipated costs (in time and money) are less than the anticipated costs of litigation;

(iv) Settlement attempts have reached an impasse;

(v) ADR techniques have been used successfully in similar situations;

(vi) There is a need for independent expert analysis; or,

(vii) The claim has merit but its value is overstated.

(2) *Factors disfavoring ADR.* The following circumstances do not favor use of ADR:

(i) Cases involving disputes controlled by clear legal precedent, making compromise difficult;

(ii) The resolution will have a significant impact on other pending cases or on the future conduct of Department business;

(iii) The dispute is primarily over issues of law;

(iv) A decision of precedential value is needed;

(v) A significant policy question is involved;

(vi) A full public record of the proceeding is important;

(vii) The outcome could significantly involve persons who are not parties to the contract;

(viii) The costs of pursuing an ADR procedure (in time and money) exceed the cost of litigation;

(ix) The nature of the case may cause ADR to be used merely for delay or discovery; or,

(x) The case involves criminal violations.

(3) *Initial action.* Immediately upon receipt of a claim, the contracting officer shall send a letter acknowledging receipt of the claim and soliciting the contractor's views on submitting this claim for ADR. In every dispute, the first step toward resolution shall be unassisted negotiations, in which the parties try to work out the disagreement among themselves. If this fails, before issuing a final decision, the contracting officer shall consult first with the head of the contracting activity, and contact the Office of the Legal Adviser and A/OPE to determine whether the disagreement appears susceptible to resolution by ADR. Consideration shall be given to pursuing additional fact-finding or designating a neutral

expert in the disputed issue to provide an advisory opinion.

(c) *Methods of ADR.* If the initial action to resolve the dispute fails, and the contracting officer issues a final decision which is appealed, ADR may still be feasible. The GSBICA issues a notice regarding ADR to all contractors who file appeals under the Contract Disputes Act. This notice describes the following ADR techniques, which contracting officers are urged to discuss with contractors at any time:

(1) *Settlement judge.* A settlement judge is either an administrative judge or hearing examiner who is appointed by the parties in dispute for the purpose of facilitating settlement. The agenda is flexible and based on the specifics of the individual dispute. By holding a frank, in-depth discussion of the strengths and weaknesses of each party's position, the settlement judge may be able to foster a settlement of the dispute. The settlement judge may meet with the parties jointly or individually, and the settlement judge's recommendations are not binding. Typically, the settlement judge's opinions, based on his or her experience in handling prior disputes, will help the parties realize whether their arguments have merit or not.

(2) *Minitrial.* A minitrial is not an actual trial but rather a flexible, expedited, but structured procedure in which each party presents an abbreviated version of its position both to a neutral advisor (who may be appointed by the GSBICA) and to principals of the parties who have full contractual authority to conclude a settlement. The parties mutually decide on the form of presentation without regard to traditional judicial proceedings or rules of evidence. An advance agreement by the parties specifies the procedure to be followed in making presentations, as well as the role of the neutral advisor. Upon conclusion of the presentations, settlement negotiations are conducted. The neutral advisor may assist the parties in negotiating settlement, including making non-binding recommendations.

(3) *Summary trial with binding decision.* A summary trial with binding decision is a procedure in which the scheduling

of an appeal is expedited and the parties try their appeal informally before an administrative judge or panel of judges. The length of the trial and the time for presentation and decision are tailored to the needs of the particular case. Trial procedures and rules applicable to appeals are modified or eliminated to expedite resolution of the appeal. The parties must agree, however, that all decisions, rulings, and orders by the judge(s) are final, conclusive, and not appealable, and may not be set aside, except for fraud. A summary "bench" decision is issued at the conclusion of the trial or a summary written decision will be issued within ten (10) days of either the trial's conclusion or receipt of a trial transcript.

(4) *Mediation*. Mediation is a process in which a neutral and impartial third party assists the Government and the contractor in conflict to negotiate an acceptable settlement of contested issues. The mediator is jointly selected and is asked by the disputing parties to assist them to reach a voluntary agreement. The mediator has no decision-making authority and cannot impose a decision. Mediation assistance involves working with the parties to improve their communications, clarify or interpret data, identify key issues to be discussed, design an effective negotiation process, generate settlement options, or help to identify or formulate areas of agreement. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: <http://www.adrr.com>

(5) *Arbitration*. Non-binding arbitration is a process in which a dispute is jointly submitted by the Government and a contractor to an impartial and neutral person or panel who provides a written, non-binding opinion used as a guide for negotiations toward a settlement. Although the Administrative Dispute Resolution Act of 1990 (Pub. L. 101-552) allows agencies to use binding arbitration, the law provides that the agency head may vacate any arbitration award within 30 days after it is served on all parties. For this reason, non-binding arbitration is preferable. Additional information on alternative dispute resolution and mediation resources is available at the following

address on the Internet: <http://www.adrr.com>

(6) *Partnering*. Partnering involves an agreement in principle to share the risks involved in completing a project, and to establish and promote a partnership environment. Partnering itself is not a contractual agreement and it does not create any legally enforceable rights, but instead partnering seeks to create a new cooperative attitude in completing Government contracts. The three basic steps in partnering are:

(i) Establish the new relationship through personal contact among the principals for the Government and the contractor before the work begins;

(ii) Prepare a joint statement of goals establishing common objectives in specific detail for reaching the goals; and,

(iii) Identify specific dispute prevention processes designed to head off problems, evaluate performance, and promote cooperation. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: <http://www.adrr.com>

(d) *ADR procedures*. The ADR method shall be selected voluntarily by both the Government and the contractor. Both parties shall agree on the procedures to be followed, including the agenda and amount of time allowed for each party to present its case. The parties may choose not to have a written transcript or hearing on the record, as this might inhibit settlement. Also, the decision rendered, if any, should not be considered to establish any precedent for future litigation unless the parties agree otherwise. In cases where the parties agree to pay jointly for a third-party neutral advisor, it is recommended that the parties and the advisor agree on a fair and reasonable price. The Government would then issue a simplified acquisition (if the dollar amount does not exceed the simplified acquisition limitation) for 50% of the agreed price, and the advisor would submit separate invoices (each for 50% of the price) to the Government and the contractor.

[59 FR 66764, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

633.270

48 CFR Ch. 6 (10–1–01 Edition)

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270–1 Scope of section.

This section concerns disputes relating to DOS contracts and the transfer of certain appellate and review functions from the Department of State to the General Services Board of Contract Appeals.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

633.270–2 Designation.

The General Services Board of Contract Appeals (GSBCA) is the authorized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes relating to DOS contracts

subject to the Contract Disputes Act of 1978. The GSBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues relating to DOS contracts subject to the Contract Disputes Act of 1978.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

633.270–3 DOS support.

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the GSBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

Sec.

634.003 Responsibilities.

634.005 General requirements.

634.005-6 Full production.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 34.003(a).

(b) The Under Secretary for Management is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A-109.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 64 FR 43628, Aug. 11, 1999]

634.005 General requirements.

634.005-6 Full production.

The Deputy Secretary is the agency head for the purposes of FAR 34.005-6 with power of redelegation to the Under Secretary for Management.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.1—General

Sec.

636.101 Applicability.

636.101-70 Exception.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

636.602-1 Selection criteria.

636.602-4 Selection authority.

636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

Subpart 636.1—General

636.101 Applicability.

636.101-70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, may be excepted from the provisions of the FAR (48 CFR Ch. 1) under the authority of the Foreign Service Buildings Act, 1926, as amended, 22 U.S.C. 292 *et seq.*, as further codified at section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code. The Deputy Assistant Secretary for Foreign Buildings Operations is authorized to waive the provisions of the FAR.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 64 FR 43628, Aug. 11, 1999]

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

(a) In accordance with a class deviation approved by the Procurement Executive, contracting officers at overseas contracting activities shall insert DOSAR 652.236-70, Accident Prevention, in lieu of FAR clause 52.236-13 when awarding construction contracts.

[64 FR 43628, Aug. 11, 1999]

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

636.602-1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602-1(b).

[64 FR 43628, Aug. 11, 1999]

636.602-4 Selection authority.

(a) The final selection decision shall be made as designated by the Deputy Assistant Secretary for Foreign Buildings Operations for acquisitions issued by that office; the Director, Moscow Embassy Buildings Control Office, for Moscow chancery building(s) only; and, the appropriate head of the contracting activity for all other actions.

[59 FR 66766, Dec. 28, 1994]

636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

The short selection process described in FAR 36.602-5 is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[59 FR 66766, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

Sec.

637.103 Contracting officer responsibility.

637.104 Personal services contracts.

637.104-70 Personal services contracts.

637.110 Solicitation provisions and contract clauses.

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104-70 Personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau of Population, Refugees, and Migration, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics and Law Enforcement Affairs, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Office of Foreign Buildings and the Moscow Embassy Control Office, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e);

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts; and

(i) For the Bureau of Diplomatic Security, section 206 of Public Law 99-399,

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641.201

as amended by the Emergency Supplemental Appropriations Act of 1998.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995; 64 FR 43629, Aug. 11, 1999]

637.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 652.237-70, Compensatory Time Off, in personal services contracts awarded in support of International Narcotics Control programs overseas, if the contracting officer determines its use appropriate.

(b) The contracting officer shall insert the clause at 652.237-71, Identification/Building Pass, in all solicitations and contracts where contractor personnel require frequent and continuing access to Department of State facilities.

(c) The contracting officer shall insert a clause substantially the same as the clause at 652.237-72, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any Department of State facility. Overseas contracting activities may add local holidays to

the list included in paragraph (a) of the clause.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43629, Aug. 11, 1999]

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

The head of the contracting activity is the agency head for the purposes of FAR 37.204.

[64 FR 43629, Aug. 11, 1999]

PART 641—ACQUISITION OF UTILITY SERVICES

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43629, Aug. 11, 1999, unless otherwise noted.

Subpart 641.2—Acquiring Utility Services

641.201 Policy.

(d) The Procurement Executive is the agency head for the purposes of FAR 41.201(d)(2)(i) and FAR 41.201(d)(3).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 642.2—Contract Administration Services

Sec.

642.270 Contracting Officer's Representative (COR).

642.271 DOSAR contract clauses.

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703-2 Certificate of indirect costs.

Subpart 642.14—Traffic and Transportation Management

642.1406-2 Contract clause.

642.1406-2-70 DOSAR contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 642.2—Contract Administration Services

642.270 Contracting Officer's Representative (COR).

(a) *Scope.* Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. This section is mandatory for domestic contracting activities and recommended for overseas contracting activities.

(b) *Policy.* It is Department policy that only Department of State employees who have completed adequate training and have the necessary experience and judgment shall be appointed as CORs. This policy shall be reinforced by contracting officers and administered jointly by A/OPE and FSI. Required training shall be funded by the COR's office.

[59 FR 66766, Dec. 28, 1994]

642.271 DOSAR contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 652.242-70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

(b) The contracting officer shall insert a clause substantially the same as the clause at 652.242-73, Authorization and Performance, in all solicitations and contracts to be awarded and/or performed overseas. For overseas local guard contracts, the contracting officer shall use the clause with its Alternate I.

[64 FR 43629, Aug. 11, 1999]

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703-2 Certificate of indirect costs.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 42.703-2(b).

[64 FR 43629, Aug. 11, 1999]

Subpart 642.14—Traffic and Transportation Management

642.1406-2 Contract clause.

642.1406-2-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.242-71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242-72, Shipping Instructions, in solicitations and contracts with a source in the United

Department of State

645.302-1

States and overseas shipment of supplies is required.

SOURCE: 64 FR 43629, Aug. 11, 1999, unless otherwise noted.

PART 643—CONTRACT MODIFICATIONS

Subpart 643.1—General

Sec.

643.102 Policy.

643.102-70 Contract compliance and review.

643.104 Notification of contract changes.

643.104-70 DOSAR contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 643.1—General

643.102 Policy.

643.102-70 Contract compliance and review.

When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66767, Dec. 28, 1994; 64 FR 43629, Aug. 11, 1999]

643.104 Notification of contract changes.

643.104-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.243-70, Notices, in all solicitations and contracts exceeding the micro-purchase threshold which are awarded and/or performed overseas.

[64 FR 43629, Aug. 11, 1999]

PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 644.3—Contractor's Purchasing System Reviews

644.302 Requirements.

(a) The Procurement Executive is the head of the agency for the purpose of FAR 44.302(a).

PART 645—GOVERNMENT PROPERTY

Subpart 645.3—Providing Government Property to Contractors

Sec.

645.302 Providing facilities.

645.302-1 Policy.

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.

645.302-1 Policy.

The authority to make the determination prescribed in FAR 45.302-1(a)(4) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

645.403

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

(a) The head of the contracting activity is the agency head's designee for the purpose of FAR 45.403(a).

[64 FR 43629, Aug. 11, 1999]

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608–6 Waiver of screening requirements.

The Procurement Executive is the agency head's designee for the purposes of FAR 45.608–6.

645.610 Sale of surplus contractor inventory.

645.610–2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610–2(a).

PART 647—TRANSPORTATION

Sec.

647.000 Scope of part.

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207–7 Liability and insurance.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66767, Dec. 28, 1994, unless otherwise noted.

647.000 Scope of part.

The FAR and DOSAR do not apply to the acquisition of transportation services via Government bill of lading (GBL) or other similar forms.

48 CFR Ch. 6 (10–1–01 Edition)

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207–7 Liability and insurance.

(e) The Procurement Executive has approved a class deviation for paragraph (c) of FAR clause 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods. The contracting officer shall indicate that the contractor shall indemnify the owner of the goods at a rate of \$5.00 per pound (or metric equivalent in local currency) based on the total net weight. The rate conforms with liability calculations found in International Through Government Bills of Lading (ITGBL).

[64 FR 43629, Aug. 11, 1999]

PART 648—VALUE ENGINEERING

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 648.1—Policies and Procedures

648.102 Policies.

(a) The authority to grant exemptions prescribed in FAR 48.102(a), or to extend future contract savings or sharing pursuant to FAR 48.102(g), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70).

[55 FR 5775, Feb. 16, 1990]

Subpart 648.2—Contract Clauses

648.201 Clauses for supply or service contracts.

The authority to determine exemptions prescribed in FAR 48.201(a)(6) is delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5775, Feb. 16, 1990]

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651.701

**PART 649—TERMINATION OF
CONTRACTS**

AUTHORITY: 40 U.S.C. 485(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66767, Dec. 28, 1994, unless otherwise noted.

Subpart 649.1—General Principles.

649.106 Fraud or other criminal conduct.

If the Termination Contracting Officer (TCO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts to the Office of the Inspector General.

**PART 651—USE OF GOVERNMENT
SOURCES BY CONTRACTORS**

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

**Subpart 651.70—Contractor Use of
Travel Advances, Official
Travel Orders, and Govern-
ment Travel Requisitions**

651.701 Policy.

(a) It is the Department's policy that contractors shall not:

(1) Receive travel advances from the Department for contract-related travel;

(2) Travel under official travel orders; or,

(3) Receive Government Travel Requisitions (GTRs) for transportation.

(b) All contract-related travel shall be performed on the contractor's account with reimbursement provided after submission of a proper voucher.

(c) This policy does not apply to personal services contractor; *provided*, that such contractors are paid through the Department's payroll system and they are subject to the standard payroll deductions of Federal Withholding Tax and FICA. It also does not apply to contracts awarded by the Office of Language Services (A/OPR/LS).

[59 FR 66767, Dec. 28, 1994]

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

652.206-70 Competition Advocate/Ombudsman.

652.216-70 Ordering—Indefinite-Delivery Contract.

652.216-71 Price Adjustment.

652.219-70 Department of State Subcontracting Goals.

652.219-71 Section 8(a) Direct Awards.

652.225-70 Arab League Boycott of Israel.

652.225-71 Section 8(a) of the Export Administration Act of 1979, as Amended.

652.226-70 Certification of Status as a Minority Business Enterprise.

652.228-70 Indemnification.

652.228-71 Worker's Compensation Insurance (Defense Base Act)—Services.

652.228-72—652.228-73 [Reserved]

652.228-74 Defense Base Act insurance rates—Limitation—Fixed-price.

652.228-75 [Reserved]

652.228-76 Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials.

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

652.229-71 Personal Property Disposition at Posts Abroad.

652.232-70 Payment Schedule and Invoice Submission (Fixed-Price).

652.232-71 Voucher Submission (Cost-Reimbursement).

652.232-72 Limitation of Funds.

652.236-70 Accident Prevention.

652.237-70 Compensatory time off.

652.237-71 Identification/Building Pass.

652.237-72 Observance of Legal Holidays and Administrative Leave.

652.242-70 Contracting Officer's Representative (COR).

652.242-71 Notice of Shipments.

652.242-72 Shipping Instructions.

652.242-73 Authorization and Performance.

652.243-70 Notices.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

652.206-70 Competition Advocate/Ombudsman.

As prescribed in 606.570, insert the following provision:

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COMPETITION ADVOCATE/OMBUDSMAN (AUG 1999)

(a) The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition and use of commercial items. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and commercial practices, potential offerors are encouraged to first contact the contracting officer for the respective solicitation. If concerns remain unresolved, contact the Department of State Competition Advocate on (703) 516-1680, by fax at (703) 875-6155, or write to: Department of State, Competition Advocate, Office of the Procurement Executive (A/OPE), Suite 603, SA-6, Washington, DC 20522-0602.

(b) The Department of State's Acquisition Ombudsman has been appointed to hear concerns from potential offerors and contractors during the preaward and postaward phases of this acquisition. The role of the ombudsman is not to diminish the authority of the contracting officer, the Technical Evaluation Panel or Source Evaluation Board, or the selection official. The purpose of the ombudsman is to facilitate the communication of concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel, and work to resolve them. When requested and appropriate, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to contact the contracting activity ombudsman, [insert name], at [insert telephone and fax numbers]. For an American Embassy or overseas post, refer to the numbers below for the Department Acquisition Ombudsman. Concerns, issues, disagreements, and recommendations which cannot be resolved at a contracting activity level may be referred to the Department of State Acquisition Ombudsman at (703) 516-1680, by fax at (703) 875-6155, or write to: Department of State, Acquisition Ombudsman, Office of the Procurement Executive (A/OPE), Suite 603, SA-6, Washington, DC 20522-0602.

(End of provision)

[64 FR 43629, Aug. 11, 1999]

652.216-70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.506-70, insert the following clause:

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ORDERING—INDEFINITE-DELIVERY CONTRACTS (DEC 1994)

The Government shall use one of the following forms to issue orders under this contract:

(a) The Optional Form 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation; or,

(b) The Optional Form 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66768, Dec. 28, 1994; 64 FR 43630, Aug. 11, 1999]

652.216-71 Price Adjustment.

As prescribed in 616.203-4, insert a clause substantially the same as follows:

PRICE ADJUSTMENT (AUG 1999)

(a) The contract price may be increased or decreased in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the [insert name of country] Government. Direct service labor costs include only the costs of wages and direct benefits (such as social security, health insurance, unemployment compensation insurance) paid to or incurred for the direct benefit of personnel performing services under one of the categories listed in Section [identify section number] of this contract. Price adjustments will include only changes in direct service labor costs incurred in order to comply with the requirements of the law. No adjustment will be made under this clause with respect to labor costs of personnel not performing direct service labor under the categories of Section [identify section], nor for overhead, profit, general and administrative (G&A) costs, taxes or any other costs whatsoever.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred during the term of this contract and subsequent to the award date of this contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the contractor's costs under this contract.

(c) The contractor shall present data that clearly supports any request for adjustment. This data shall be submitted no later than 30 calendar days after the changes in the law

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have been made public. This data shall include, but not be limited to, the following:

(1) The calculation of the amount of adjustment requested; and,

(2) Documentation which identifies and provides the appropriate portions of the text of the particular law from which the request is derived.

(d) In order to establish the change between the requested adjusted rate and the original rate, the contractor shall support the appropriate data and composition of the original rate and the requested adjusted rate. This shall include details regarding specific hourly rates paid to individual employees. For contracts paid in U.S. dollars, the contractor's request for price adjustment shall present data reflecting:

(1) The exchange rate in effect on the date of the contractor's proposal that was accepted for the basic contract; and

(2) The current exchange rate and its effect on payment of workers in local currency. The allowable adjustment shall be limited to the extent to which increases in direct service labor costs due to host country law changes are not offset by exchange rate gains.

(e) Only direct cost changes mandated by enacted laws shall be considered for adjustment under this contract. Changes for purposes of maintaining parity of pay between employees at the minimum mandated levels and employees already paid at levels above the newly mandated minimums shall not be considered. Therefore, if the contractor elects to increase payments to employees who are already being paid at or above the mandated amounts, such increased costs shall be borne solely by the contractor and shall not be justification for an increase in the hourly and monthly rates under this contract.

(f) Any request for adjustment shall be presented by signature of an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(g) No adjustment shall be made to the contract price that relates to any indirect, overhead, or fixed costs, profit or fee. Only the changes in direct service labor wages (and any benefits based directly on wages) shall be considered by the U.S. Government as basis for contract price changes.

(h) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment has been made under this contract.

(i) This clause shall only apply to laws enacted by the [insert name of country] Government meeting the criterion set forth above in paragraph (b). No adjustments shall be made due to currency fluctuations in exchange rates.

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(End of clause)

[64 FR 43630, Aug. 11, 1999]

652.219-70 Department of State Subcontracting Goals.

As prescribed in 619.708-70, insert a provision substantially the same as follows:

DEPARTMENT OF STATE SUBCONTRACTING
GOALS (DEC 1994)

(a) The offeror shall provide a Small, Small Disadvantaged and Woman-Owned Enterprise Subcontracting Plan that details its approach to selecting and using Small, Small Disadvantaged, and Woman-Owned Business Enterprises as requested by the contracting officer.

(b) For the fiscal year [insert appropriate fiscal year], the Department's subcontracting goals are as follows:

(1) Goal for subcontracting to SB:

(2) Goal for subcontracting to SDB:

(3) Goal for subcontracting to SWB:

(4) Omnibus goals (if applicable):

- (i) 10% to minority business
- (ii) 10% to small business

(End of provision)

[59 FR 66768, Dec. 28, 1994]

652.219-71 Section 8(a) Direct Awards.

As prescribed in 619.811-3(f), insert the following clause:

SECTION 8(A) DIRECT AWARDS (AUG 1999)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of State (DOS). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The DOS contracting officer is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the DOS contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The DOS contracting officer

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shall also coordinate with SBA prior to processing any novation agreement. The DOS contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the DOS contracting officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and,

(2) to adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting.

(End of clause)

[64 FR 43630, Aug. 11, 1999]

652.225-70 Arab League Boycott of Israel.

As prescribed in 625.7002(a), insert the following provision:

ARAB LEAGUE BOYCOTT OF ISRAEL (AUG 1999)

(a) Definitions. As used in this provision:

Foreign person means any person other than a United States person as defined below.

United States person means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as provided under the Export Administration Act of 1979, as amended.

(b) Certification. By submitting this offer, the offeror certifies that it is not:

(1) Taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which Section 8(a) of the Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)) prohibits a United States person from taking; or,

(2) Discriminating in the award of subcontracts on the basis of religion.

(End of provision)

[64 FR 43631, Aug. 11, 1999]

652.225-71 Section 8(a) of the Export Administration Act of 1979, as Amended.

As prescribed in 625.7002(b), insert the following clause:

SECTION 8(A) OF THE EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED (AUG 1999)

(a) Section 8(a) of the U.S. Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)), prohibits compliance by U.S. persons with any boycott fostered by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. The Boycott of Israel by Arab League countries is such a boycott, and therefore, the following actions, if taken with intent to comply with, further, or support the Arab League Boycott of Israel, are prohibited activities under the Export Administration Act:

(1) Refusing, or requiring any U.S. person to refuse to do business with or in Israel, with any Israeli business concern, or with any national or resident of Israel, or with any other person, pursuant to an agreement of, or a request from or on behalf of a boycotting country;

(2) Refusing, or requiring any U.S. person to refuse to employ or otherwise discriminating against any person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person;

(3) Furnishing information with respect to the race, religion, or national origin of any U.S. person or of any owner, officer, director, or employee of such U.S. person;

(4) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the State of Israel, with any business concern organized under the laws of the State of Israel, with any Israeli national or resident, or with any person which is known or believed to be restricted from having any business relationship with or in Israel;

(5) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the State of Israel; and,

(6) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement against doing business with the State of Israel.

(b) Under Section 8(a), the following types of activities are not forbidden "compliance

with the boycott," and are therefore exempted from Section 8(a)'s prohibitions listed in paragraphs (a)(1)-(6) above:

(1) Complying or agreeing to comply with requirements:

(i) Prohibiting the import of goods or services from Israel or goods produced or services provided by any business concern organized under the laws of Israel or by nationals or residents of Israel; or,

(ii) Prohibiting the shipment of goods to Israel on a carrier of Israel, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(2) Complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, black-listing, or similar exclusionary terms, other than with respect to carriers or route of shipments as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(3) Complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurance, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(4) Complying or agreeing to comply with the export requirements of the boycotting country relating to shipments or transshipments of exports to Israel, to any business concern of or organized under the laws of Israel, or to any national or resident of Israel;

(5) Compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and,

(6) Compliance by a U.S. person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his or her activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his or her own use, including the performance of contractual services within that country, as may be defined by such regulations.

(End of clause)

[64 FR 43631, Aug. 11, 1999]

652.226-70 Certification of Status as a Minority Business Enterprise.

As prescribed in 626.200-70, insert the following provision:

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE (AUG 1999)

The Bidder/Offeree/Supplier certifies that it ☐ is ☐ is not [check one] a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are:

[Check the applicable block]

☐ Black Americans
☐ Hispanic Americans
☐ Native Americans
☐ Asian-Pacific Americans
☐ Other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

Alternate I (AUG 1999).

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE (ALTERNATE I) (AUG 1999)

(a) If you are a minority-owned business, please indicate in the comments section of your quote/response the applicable minority designation from those listed below. If no comments are received, it shall be assumed that you are not a minority-owned business. This request for information is to assist the Department collect statistics on awards to minority-owned businesses and will not influence the award decision.

(b) A minority business enterprise is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are: Black Americans; Hispanic Americans; Native Americans; Asian-Pacific Americans; and, other groups whose members are U.S. citizens and are found to

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be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

[64 FR 43631, Aug. 11, 1999]

652.228-70 Indemnification.

As prescribed in 628.7001(b), insert the following clause:

INDEMNIFICATION (JUL 1988)

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged negligence of the Government, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43632, Aug. 11, 1999]

652.228-71 Worker's Compensation Insurance (Defense Base Act)—Services.

As prescribed in 628.305(b), insert the following clause:

WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)—SERVICES (AUG 1999)

(a) This clause supplements FAR 52.228-3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(c) Since the Department of State has obtained a waiver of DBA coverage for contractor employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits

as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(End of clause)

Alternate I (AUG 1999). If the contract is for construction, as prescribed in 628.305 (b), substitute the last sentence of paragraph (b) to read as follows:

The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction.

[64 FR 43632, Aug. 11, 1999]

652.228-72—652.228-73 [Reserved]

652.228-74 Defense Base Act insurance rates—Limitation—Fixed-price.

As prescribed in 628.306, insert the following provision:

DEFENSE BASE ACT INSURANCE RATES— LIMITATION—FIXED-PRICE (AUG 1999)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ [contracting officer insert current rate] of compensation; or

Construction @ [contracting officer insert current rate] of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: ____

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(2) Defense Base Act Insurance Costs: _____

(3) Total Cost: _____

(c) Bidders/offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

[64 FR 43632, Aug. 11, 1999]

652.228-75 [Reserved]

652.228-76 Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials.

As prescribed in 628.307, insert the following provision:

DEFENSE BASE ACT INSURANCE RATES—LIMITATION—COST-REIMBURSEMENT, LABOR-HOUR, AND TIME-AND-MATERIALS (AUG 1999)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation (direct salary plus differential, but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); or

Construction @ [contracting officer insert current rate] of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

[64 FR 43632, Aug. 11, 1999]

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

As prescribed in 629.401-70, insert the following clause:

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EXCISE TAX EMEMPTION STATEMENT FOR CONTRACTORS WITHIN THE UNITED STATES (JUL 1988)

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43632, Aug. 11, 1999]

652.229-71 Personal Property Disposition at Posts Abroad.

As prescribed in 629.402-1-70, insert the following clause:

PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD (AUG 1999)

Regulations at 22 CFR Part 136 require that U.S. Government employees and their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. Should the contractor experience importation or tax privileges in a foreign country because of its contractual relationship to the United States Government, the contractor shall observe the requirements of 22 CFR part 136 and all policies, rules, and procedures issued by the chief of mission in that foreign country.

(End of clause)

[64 FR 43633, Aug. 11, 1999]

652.232-70 Payment Schedule and Invoice Submission (Fixed-Price).

As prescribed in 632.908(a), the contracting officer may insert a clause substantially the same as follows:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (AUG 1999)

(a) *General.* The Government shall pay the contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Section B of this contract.

[Use paragraph (b) only if partial payments apply. Otherwise, paragraph (a) above assumes the contractor will be paid in full amount upon completion of all contractual requirements].

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(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment No.	Specific deliverable	Delivery date	Payment amount
1			
2			
3			

[Continue as necessary]

(c) *Invoice Submission.* Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] to the office identified in Block 10 of the SF-26, Block 23 of the SF-33, or Block 18b of the SF-1449. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment".

(d) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(End of clause)

[59 FR 66771, Dec. 28, 1994, as amended at 64 FR 43633, Aug. 11, 1999]

652.232-71 Voucher Submission (Cost-Reimbursement).

As prescribed in 632.908(b), the contracting officer may insert a clause substantially the same as follows:

VOUCHER SUBMISSION (COST-REIMBURSEMENT) (AUG 1999)

(a) *General.* The contractor shall submit, on a monthly basis [contracting officer may substitute a different time frame, if appropriate], an original and [contracting officer insert appropriate number] copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment", the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the office identified in Block 10 of the SF-26, Block 23 of the SF-33, or Block 18b of the SF-1449.

(b) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43633, Aug. 11, 1999]

652.232-72 Limitation of Funds.

As prescribed in 632.705-70, insert the following clause:

LIMITATION OF FUNDS (AUG 1999)

(a) Of the total price in Section B (or the "Prices" section), only the amount stated on the contract award document or subsequent modifications is now available for payment and obligated under this contract. It is anticipated that from time to time, additional funds will be obligated under the contract until the total price of the contract is obligated.

(b) The Government is not obligated to pay or reimburse the contractor more than the amount obligated pursuant to this clause. The contractor agrees to perform the contract up to the point at which the total amount paid and payable by the Government (including amounts payable for subcontracts and settlement costs if this contract is terminated for convenience) approximates but does not exceed the total amount obligated.

(c)(1) It is contemplated that funds now obligated under this contract will cover the work to be performed until [contracting officer insert date].

(2) If the contractor considers the funds obligated under this contract to be insufficient to cover the work to be performed until that date, or another date agreed to by the parties, the contractor shall notify the contracting officer in writing and indicate the date on which it expects expended funds to approximate 75 percent of the total amount obligated. The notice shall state the estimated amount of additional funds required to continue performance through the date specified in paragraph (c)(1) of this clause or another date agreed to by the parties.

(3) If, after notification is provided pursuant to paragraph (c)(2) of this clause, additional funds are not obligated, or an earlier date than the date in paragraph (c)(1) of this clause is not agreed to, the contractor shall not be obligated to continue performance under this contract (including actions under the termination clause of this contract) beyond the funds obligated for contract performance.

(d) When additional funds are obligated from time to time for continued performance of this contract, the contract shall be modified to increase the funds obligated and to indicate the period of performance for which funds are applicable. The contractor may notify the contracting officer as provided in paragraph (c)(2) of this clause regarding any additional funds obligated.

(e) If the contractor incurs additional costs or is delayed in the performance of work under this contract, solely by reason of the Government's failure to obligate additional funds in amounts sufficient for the timely performance of this contract, an equitable adjustment may be made to the price, or time of delivery, or both.

(f) This clause shall become inoperative upon obligation of funds sufficient to cover the full price stated in the contract, except for rights and obligations then existing under this clause.

(g) Nothing in this clause shall affect the Government's right to terminate the contract for convenience or default.

(End of clause)

[64 FR 43633, Aug. 11, 1999]

652.236-70 Accident Prevention.

As prescribed in 636.513, insert the following clause:

ACCIDENT PREVENTION (AUG 1999)

(a) General. The contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and, control costs in the performance of this contract. For these purposes, the contractor shall:

(1) Provide appropriate safety barricades, signs and signal lights;

(2) Comply with the standards issued by any local government authority having jurisdiction over occupational health and safety issues; and,

(3) Ensure that any additional measures the contracting officer determines to be reasonably necessary for this purpose are taken.

(4) [The contracting officer shall specify additional requirements regarding safety if the work involves scaffolding or other work at heights above 2 meters, trenches or other excavation greater than 1 meter, earth moving equipment, electrical hazards, work in confined spaces (limited exits, potential for oxygen less than 19.5%, toxic or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.), or hazardous materials (especially those used indoors, e.g., paints, solvents, etc.).]

(b) Records. The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic

injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(c) Subcontracts. The contractor shall be responsible for its subcontractors' compliance with this clause.

(d) Written program. Before commencing work, the contractor shall:

(1) Submit a written plan for implementing this clause; and,

(2) Meet with the contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) Notification. The contracting officer shall notify the contractor of any non-compliance with these requirements and the corrective actions required. This notice, when delivered to the contractor or the contractor's representative on site, shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer may issue an order suspending all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any suspension of work order issued under this clause.

(End of clause)

[64 FR 43633, Aug. 11, 1999]

652.237-70 Compensatory time off.

As prescribed in 637.110(a), insert the following clause:

COMPENSATORY TIME OFF (DEC 1994)

(a) Compensatory time off means time from work during the personal service contract employee's basic work week in exchange for performing an equal amount of irregular or occasional overtime work which is officially ordered or approved.

(b) At the discretion of the Contracting Officer's Representative (COR), the contractor may earn compensatory time off in accordance with 3 FAM Section 232.6—Compensatory Time Off. Compensation time off remaining to the credit of a personal services contract employee at the end of a 16-week period and/or at the end of the contract period shall be forfeited.

(c) Compensatory time may not be converted to overtime.

Department of State

652.237-72

(End of clause)

[59 FR 66772, Dec. 28, 1994]

652.237-71 Identification/Building Pass.

As prescribed in 637.110(b), insert the following clause.

IDENTIFICATION/BUILDING PASS (AUG 1999)

(a) The contractor shall obtain a Department of State building pass for all employees performing under this contract who require frequent and continuing access to Department of State facilities. Passes shall be issued only to contractor employees who are United States citizens. Passes will be issued by the Bureau of Diplomatic Security, Office of Procedural Security, Domestic Facilities Division. They shall be used for the purpose of contractor performance only, and shall not be used for any other purpose.

(b) The contractor shall submit an application in the form prescribed by the COR. The contractor shall also provide a letter on company letterhead to accompany the application containing the following information:

(1) The purpose for which the pass is being requested;

(2) The type of access the applicant requires;

(3) Whether or not the applicant has a valid security clearance; and,

(4) The contract number and period of performance of the contract.

(c) The complete package, including the COR's approval memorandum, shall be delivered to the Building Pass Application Unit, Room B266, Department of State, 2201 C Street, NW, Washington, DC; or, the post security officer, if the contract is performed at a U.S. owned or leased building overseas. The employee(s) for whom the pass(es) is/are being requested may be required to personally submit the application and to provide evidence of identity and United States citizenship.

(d) All contractor employees shall wear the passes in plain sight at all times while in Department of State buildings. All contractor employees shall show their passes when entering these buildings and upon request.

(e) All passes shall be returned to the COR upon separation of the employee, or expiration or termination of the contract. Final payment under this contract shall not be made until all passes are returned to the COR.

(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43634, Aug. 11, 1999]

652.237-72 Observance of Legal Holidays and Administrative Leave.

As prescribed in 637.110(c), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND ADMINISTRATIVE LEAVE (AUG 1999)

(a) The Department of State observes the following days as holidays:

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(b) When any such day falls on a Saturday, the preceding Friday is observed; when any such day falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(c) When the Department of State grants administrative leave to its Government employees, assigned contractor personnel in Government facilities shall also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the contracting officer or his/her duly authorized representative.

(d) For fixed-price contracts, if services are not required or provided because the building is closed due to inclement weather, unanticipated holidays declared by the President, failure of Congress to appropriate funds, or similar reasons, deductions will be computed as follows:

(1) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(2) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided. If services are provided for portions of days, appropriate adjustment will be made by the contracting officer to ensure that the contractor is compensated for services provided.

652.242-70

(e) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43634, Aug. 11, 1999]

652.242-70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert a clause substantially the same as follows:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (AUG 1999)

(a) The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer and this authority is delegated in the designation.

(b) The COR is [insert job title of COR].

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66772, Dec. 28, 1994; 64 FR 43634, Aug. 11, 1999]

652.242-71 Notice of Shipments.

As prescribed in 642.1406-2-70(a), insert the following clause:

NOTICE OF SHIPMENTS (JUL 1988)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

48 CFR Ch. 6 (10-1-01 Edition)

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43634, Aug. 11, 1999]

652.242-72 Shipping Instructions.

As prescribed in 642.1406-2-70(b), insert the following clause:

SHIPPING INSTRUCTIONS (DEC 1994)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than 1/8 of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 45 kg	19.05 × 57.15mm
46 to 113 kg	22.23 × 73.03mm
114 to 181 kg	22.23 × 98.43mm
182 to 272 kg	22.23 × 123.83mm or 25.4 × 98.43 mm

(b) Each box shall be lined with waterproof paper and shall be bound with 19.05mm" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 453.5kg and more must be equipped with skids. Each skid shall consist of two end sections of 50.8 × 152.4mm lumber placed flat and a center section of 50.8 × 101.6mm lumber placed flat and then arranged in line to provide 254mm fork-lift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in packing case number one, which shall be marked

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as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in kilograms shall be stenciled on the same side. However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

[53 FR 26177, July 11, 1988; 53 FR 36462, Sept. 20, 1988, as amended at 59 FR 66772, Dec. 28, 1994; 64 FR 43634, Aug. 11, 1999]

652.242-73 Authorization and Performance.

As prescribed in 642.271(b), insert a clause substantially the same as follows:

AUTHORIZATION AND PERFORMANCE (AUG 1999)

(a) The contractor warrants the following:

(1) That it has obtained authorization to operate and do business in the country or countries in which this contract will be performed;

(2) That it has obtained all necessary licenses and permits required to perform this contract; and,

(3) That it shall comply fully with all laws, decrees, labor standards, and regulations of said country or countries during the performance of this contract.

(b) If the party actually performing the work will be a subcontractor or joint venture partner, then such subcontractor or joint venture partner agrees to the requirements of paragraph (a) of this clause.

(End of clause)

Alternate I (AUG 1999). If the contract is for overseas local guard services, as prescribed in 642.271(b), substitute the following paragraphs (a)(1) and (a)(2) for paragraphs (a)(1) and (a)(2) of the basic clause:

(a)(1) That it has obtained authorization to operate and do business in the country or countries in which this contract will be per-

formed, or will obtain such authorization before performance of this contract begins;

(a)(2) That it has obtained all necessary licenses and permits required to perform this contract, or will obtain such licenses and permits before performance of this contract begins;

[64 FR 43634, Aug. 11, 1999]

652.243-70 Notices.

As prescribed in 643.104-70, insert the following clause:

NOTICES (AUG 1999)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the contracting officer.

(End of clause)

[64 FR 43634, Aug. 11, 1999]

PART 653—FORMS

Sec.

653.000 Scope of part.

Subpart 653.1—General

653.101 Requirements for use of forms.

653.101-70 Policy.

653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.217 Special contracting methods.

653.217-70 DOS form DS-1921, Award/Modification of Interagency Acquisition Agreement.

653.219 Small business programs.

653.219-70 DOS form DS-1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

653.303 Agency forms.

653.302.127 Optional Form 127, Receiving and Inspection Report.

653.302.206 Optional Form 206, Purchase Order, Receiving Report and Voucher.

653.302.206A Optional Form 206A, Purchase Order, Receiving Report and Voucher—Continuation Sheet.

653.000

653.303-DS-1771 Department of State Form (DS) 1771, Contractor Evaluation Statement.

653.303-DST-1089 Department of State Form 1089, Order—Supplies or Services.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26180, July 11, 1988, unless otherwise noted.

653.000 Scope of part.

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

Subpart 653.1—General

653.101 Requirements for use of forms.

653.101-70 Policy.

The forms in FAR subpart 53.2 or in subpart 653.2 shall be used as prescribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR subpart 1.4 and 601.470.

653.110 Continuation sheets.

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

48 CFR Ch. 6 (10-1-01 Edition)

653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.217 Special contracting methods.

653.217-70 DOS form DS-1921, Award/Modification of Interagency Acquisition Agreement.

As prescribed in 617.504-70(b)(5)(i), DS-1921 is prescribed for use when awarding or modifying Economy Act Interagency Acquisition Agreements where the Department is the requesting agency.

[59 FR 66773, Dec. 28, 1994]

653.219 Small business programs.

653.219-70 DOS form DS-1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

As prescribed in 619.501(c), DS-1910 is prescribed for use in documenting set-aside decisions.

[64 FR 43634, Aug. 11, 1999]

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3.

653.303 Agency forms.

This section illustrates the DOS forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DOS form numbers.

653.302.127 OPTIONAL FORM 127,
RECEIVING AND INSPECTION REPORT

RECEIVING AND INSPECTION REPORT		METHOD OF ACQUISITION		DOCUMENT NUMBERS		
		<input type="checkbox"/> PURCHASED <input type="checkbox"/> RENTED <input type="checkbox"/> CONSTRUCTED <input type="checkbox"/> LOANED <input type="checkbox"/> DONATED <input type="checkbox"/> INVENTORY OVERAGE <input type="checkbox"/> (OTHER)		REPORT NO. P.O. NO. REQUISITION NO. TRANSFER AUTHORITY NO. CONTRACT NO. JOB NO.		
RECEIVED FROM NAME AND ADDRESS		APPROPRIATION ALLOTMENT				
POINT OF SHIPMENT		GBL NO.		OBJECTIVE CLASS		
ITEM NO.	DESCRIPTION (Include Terms of Acceptance on Loans, Donations, Etc.)	QUANTITY	UNIT	UNIT PRICE	AMOUNT	
CERTIFICATE OF RECEIPT				INSPECTOR'S CERTIFICATE		
I HEREBY CERTIFY THAT ALL ITEMS LISTED ABOVE WERE RECEIVED, INSPECTED AND ACCEPTED.				<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> OVER <input type="checkbox"/> SHORT <input type="checkbox"/> DEFECTIVE MATERIAL		
NAME (Type or Print)		OFFICE SYMBOL		(USE REVERSE FOR COMMENTS)		
SIGNATURE		DATE				

50127-102 NSN 7540-00-138-9185

OPTIONAL FORM 127
REV. JANUARY 1982
STATE - AID - USICA

**653.302.206 OPTIONAL FORM 206, PURCHASE ORDER,
RECEIVING REPORT AND VOUCHER**

Form approved by Comptroller General, U.S. March 19, 1953				PURCHASE ORDER, RECEIVING REPORT AND VOUCHER (For use in foreign countries only)				D.O. Vou. No.	
Department or Establishment U. S.				Bu. Vou. No.		Purchase Order No.			
Prepared at _____ (place) _____ (date)				PAID BY					
Purchaser THE UNITED STATES GOVERNMENT, DR.									
Seller (Payee) _____									
Address of seller _____									
Contract No. _____ (dated) _____									
Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:									
To _____ at _____									
ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE Cost Per		AMOUNT				
Use continuation sheet(s) if necessary -									
Ordering Officer (Signature) _____		Approp. _____ Allot. _____		Funds Available: _____					
Name: _____		Obl. No. _____		Name: _____		TOTAL			
Title: _____		Amt. _____		Title: _____					
I certify that the ordered items listed were received on _____ (date) except as follows:				PAYMENT: <input type="checkbox"/> Complete <input type="checkbox"/> Partial <input type="checkbox"/> Final		Amount billed, as per attached bill(s) _____ Differences _____ Amount verified correct for _____ Prepayment Audit (Signature or initials) _____			
Signature _____ Name: _____ Title: _____				Approved for _____ \$ _____ Pursuant to authority vested in me, I certify this voucher correct and proper for payment. Signature of Authorized Certifying Officer _____ Name: _____ Title: _____					
Exchange rate _____ to \$ _____				ACCOUNTING CLASSIFICATION					
Fund	Allotment	Oblig. No.	Paying Office	Date Paid	Object	Amount			
P Check No. _____ dated _____, 19____, for \$ _____ on Treasurer of United States.									
A Check No. _____ dated _____, 19____, for _____ on _____									
D Cosh _____ on _____, 19____, Payee _____									
B Title of Payee: _____									
Y									

OPTIONAL FORM 206
(FORMERLY FS-455)
MARCH 1973
DEPT. OF STATE

50206-101

IMPORTANT NOTICE TO SELLER

1. The entering office is exempt from taxes.
2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."
3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.
4. All communications concerning this order must refer to order number and be addressed to the originating office.
5. Discount terms, if any, must be shown on all bills.

48 CFR Ch. 6 (10-1-01 Edition)

Form approved by
Comptroller General, U. S.
March 19, 1958.

U. S. _____ of Bureau Vou. No. _____
(Department or establishment) Purchase Order No. _____

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
			COST	PER	

50206-201

653.303-DS-1771 DEPARTMENT OF STATE FORM (DS) 1771,
CONTRACTOR EVALUATION STATEMENT
DEPARTMENT OF STATE

WASHINGTON, D.C. 20520

CONTRACTOR EVALUATION STATEMENT

(If additional space is required, continue on blank paper, referencing items by number) Date Prepared

NOTE: The information contained on this form is for the internal use of the Department of State and shall not be disclosed outside the Department except as authorized by the Assistant Secretary of State for Administration

TO: Chief Contract Section OPR/ST/P, Room 530, 5A6 Washington, D.C. 20520	FROM: (Name and location of program office)
Name and Address of Contractor	Contract No.

I. EVALUATION OF CONTRACTOR'S PERFORMANCE

1. Explain the contractor's performance as compared to the requirements of the statement of work and its proposal, including quantity, quality, and timeliness of work done.
2. Explain relationship of contractor's personnel to the Department and other parties involved in the performance of the contract. (Did contractor's personnel conduct themselves in a professional and businesslike manner? Did they respond in a constructive way for problems and difficulties as they arose? Was there stability in the leadership and personnel assigned to the contractor or were there numerous changes?)
3. Did contractor report on progress in a timely and thorough manner as called for by the contract?
☐ Yes ☐ No (Explain)
4. Did contractor perform within the cost structure of the contract? ☐ Yes ☐ No (Explain)
5. To what extent was the final product of the contractor, including data and conclusions, responsive to the stated purpose of the contract?
6. How do you rate the contractor's overall performance?
☐ Excellent ☐ Satisfactory ☐ Less Than Satisfactory (Explain)
7. Do you recommend that the contractor be used again? ☐ Yes ☐ No (Explain)

II. EVALUATOR

Typed name and title of Technical Project Officer	Signature	Date Signed
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III. APPROVAL (By Deputy Assistant Secretary/Major Office Director)

Typed name and title of approving official	Signature	Date Approved
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FORM DS-1771
3-78

653.303

48 CFR Ch. 6 (10-1-01 Edition)

**653.303-DST-1089 DEPARTMENT OF STATE FORM 1089,
ORDER—SUPPLIES OR SERVICES**

DEPARTMENT OF STATE WASHINGTON, DC 20520 ORDER — SUPPLIES OR SERVICES <i>(Subject to terms and conditions on reverse side)</i>														Page _____ of _____ Pages			
ORDER NUMBER MUST APPEAR ON ALL PACKAGES AND RELATED PAPERS.																ATTENTION PHONE _____	
1 Form	2 CONTRACT NUMBER			3 C	4 DEST	5 PSC	6 SHIPPING INSTRUCTIONS				7 ORDER NUMBER						
8 Comm	9 GBL NUMBER		10 Type	11 Date P	12 REQ OFFICE			13 Date Rec	Alt	14 Date Sig							
15 DESCRIPTION														16 AMOUNT			
17 APPROPRIATION				ALLOTMENT				OBLIG	ORG	FUNC	OBJ	S OBJ					
18 CONTRACTOR																19 CONSIGNEE AND DESTINATION	
TO _____ DUNS ID _____																S _____	
																H _____	
																I _____	
																P _____	
																T _____	
																O _____	
																20 ULTIMATE DESTINATION	
																ZIP _____	
LINE ITEM	CATALOG/NSN	S. ID	SUPPLIES OR SERVICES				Delivery Date	U O I	NO. OF UNITS	UNIT PRICE	TOTAL						
21 FOR POINT/FAS POINT				22 DISCOUNT				23 ISSUER'S NAME				24 ISSUER'S PHONE					
BILLING INSTRUCTIONS																	
Contractor's invoice shall be submitted in an original and one copy to Office of Finance — General Claims P.O. Box 9487 Rosslyn Station Arlington, VA 22209 Invoices must show the Department's 10 digit order number, time pay- ment discount (even if net), description of each item, quantity, unit																	
cost and total amount. Contractor must furnish signed receipt from transportation carrier as proof that shipment has been forwarded. When Contractor is requested to prepay transportation charges against an F.O.B. order, such charges are to be added as a separate item to the invoice and must be supported by a paid transportation receipt. If ship- ment via APO, furnish postal receipts.																	
25 CONTRACTING/ORDERING OFFICER																	
_____ Signature Date																	

FORM DST - 1099-4-81

ORIGINAL CONTRACTOR

TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER

Note: If a contract number is shown, Terms and Conditions of the applicable contract shall apply to this Delivery Order which is issued pursuant thereto.

1. **INSPECTION AND ACCEPTANCE** - Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. **VARIATION IN QUANTITY** - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. **DISCOUNTS** - (a) Time discounts will be computed from: (1) date of delivery of the supplies to carrier when delivery and acceptance are at the point of origin, (2) date of delivery at destination or port of embarkation, when delivery and acceptance are at either of those points, or (3) date a proper invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of delivery. (b) Payment will be deemed to have been made on the date which appears on payment checks.

4. **DISPUTES** - (This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563 "the Act"). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract. The parties to this contract must comply with certain time restrictions on rendering of contracting officer decisions on claims, and on the appeal of those decisions. Further details on the rights and remedies under the Act may be found in the Federal Procurement Regulations at 1-1.318.4.

5. **FOREIGN SUPPLIES** - This contract is subject to the Buy American Act (41 U.S.C. 101 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. **CONVICT LABOR** - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c) (2)) and Executive Order 11775, December 29, 1973.

7. **OFFICIALS NOT TO BENEFIT** - No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but

this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. **COVENANT AGAINST CONTINGENT FEES** - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. **FEDERAL, STATE, AND LOCAL TAXES** - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this Purchase Order.

10. **SERVICE CONTRACT ACT OF 1965, As Amended** (Service contracts not exceeding \$2,500) - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of \$2,500, the Contractor and any sub-contractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed by 29 CFR Part 4 are hereby incorporated by reference in this contract.

11. The following terms and conditions are applicable to purchases in excess of \$2,500: (a) Employment of the Handicapped - Federal Procurement Regulation, Temporary Regulation 38, dated May 26, 1976. (b) Contract Work Hours and Safety Standards Act - Over-time Compensation Section - Federal Procurement Regulation 1-12.303. (c) Service Contract Act of 1965 - (Services contracts in excess of \$2,500) Federal Procurement Regulation 1-12.904-1.

MARKING INSTRUCTIONS

CONTAINERS OR PACKAGES shall be plainly marked to show the order number, brief description of contents, including form number, if any, quantity and vendor's name.

Receiving clerk may reject any deliveries which do not bear such identification.

SHIPPING DOCUMENTS AND CORRESPONDENCE

All shipping documents and correspondence pertaining to this order (except invoices as stated below) shall be referred or forwarded to

the person and organization who signed the order. Such documents MUST refer to the departments order number.